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# Review of the economic issues raised in relation to criterion (a)

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A report for DLA Piper

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# 1. Introduction

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The Queensland Competition Authority (QCA) is reviewing whether each of the declared services specified in section 250 of the *Queensland Competition Authority Act 1997* (QCA Act) should continue to be declared following the expiry of the existing declarations on 8 September 2020.

## 1.1 Scope of this report

We<sup>1</sup> have been asked by DLA Piper (DLA), on behalf of DBCT Management Pty Limited (DBCTM), to review the economic issues raised in the Castalia report<sup>2</sup> submitted to the QCA as part of the DBCT User Group's submission as well as the discussion relating to central Queensland coal haulage in the User Group submission itself.<sup>3</sup>

The Castalia report concludes that the coal handling service supplied at Dalrymple Bay Coal Terminal (DBCT) satisfies criterion (a) of section 76(2) of the QCA Act, being:

that access (or increased access) to the service, on reasonable terms and conditions, as a result of a declaration of the service would promote a material increase in competition in at least 1 market (whether or not in Australia), other than the market for the service.

An earlier report we prepared (our earlier report) was provided to the QCA as part of DBCTM's submission, and similarly addresses whether the coal handling service supplied at DBCT (the DBCT service) satisfies criterion (a). In our earlier report, we concluded that the DBCT service does not satisfy criterion (a).<sup>4</sup>

Our earlier report explained that a material increase in competition in a dependent market will be promoted if:

- the structure of the market or conduct of firms is changed in a way that can be expected to bring about a material enhancement of the competitive process; and
- the volume and/or quality of output in the market is expected to increase.

Applying this framework, we concluded that declaration of the DBCT service will not result in a material increase in competition in any coal export market because:

- declaration would not change the structure of those markets or the conduct of any mines, since:
  - > price will still be determined in the same way by the Asia-Pacific or global seaborne coal market;
  - > the volume transported by each miner will not be affected, so there will be no change in the structure of the market, including to the likelihood of entry; and
- declaration would not affect the total volume or quality of coal supplied in any coal export market because:
  - > no mine would change the quantity of coal that it sends to any terminal as a result of declaration;
  - > neither the quality of coal itself nor the mix of coal at each terminal will change as a result of declaration; while
  - > the non-price terms and conditions for accessing DBCT will remain substantively the same, and so this will not change the service provided to coal miners.

<sup>1</sup> The authors of this report are: Greg Houston, Daniel Young and Bronwyn McDonald. Copies of our respective curricula vitae are attached as Annexure A to this report.

<sup>2</sup> Castalia, *Dalrymple Bay coal terminal: Economic analysis of declaration criteria*, May 2018.

<sup>3</sup> Dalrymple Bay Coal Terminal User Group, *Declaration review regarding Dalrymple Bay Coal Terminal: Submission to the Queensland Competition Authority*, May 2018, pp 86-88.

<sup>4</sup> HoustonKemp, *Does DBCT's coal handling service satisfy criterion (a)?* May 2018, p 22.

We concluded in our earlier report that the volumes supplied in each of the other dependent markets turn on the volumes supplied in the coal export market, and so they will also not change as a result of declaration. There is also no reason for the quality of the services in other dependent markets to be affected by declaration of the DBCT service. Since there is no reason for the structure of the market, nor conduct of firms in those markets to change, declaration will not promote a material increase in competition in those markets.

The analysis we present in this report shows that neither the material presented in Castalia's report nor pages 86 to 88 of the DBCT User Group submission provide any grounds for altering the analysis or conclusions presented in our earlier report. Rather, we find that:

- Castalia's conclusions in relation to the tenements market and the secondary capacity for coal handling services market are each founded on an incorrect application of core economic principles, including:
  - > an opaque discussion of how criterion (a) should be interpreted, with the consequence that it is not clear what Castalia considers would constitute a 'promotion of a material increase in competition' in a related market;
  - > a misspecification of the incentives faced by DBCTM, including through the absence of any rationale to support its claim that DBCTM would have the incentive to act in a way that would distort competition in downstream markets;
  - > the overlooking of DBCT's capacity constraints and the consequences of those constraints for competition both with and without declaration; and
  - > defining an inappropriately narrow geographic market for mining tenements; and
- since no stakeholder in the declaration review process could have accurately foreseen the nature and terms of the proposed access framework that DBCTM has submitted to the QCA, which sets out the terms of access at DBCT, both Castalia and the DBCT User Group have mis-specified the nature of competition in the coal handling market without declaration and so incorrectly concluded that there are competitive benefits associated with declaration.

## 1.2 Structure of this report

The remainder of this report is organised as follows:

- section 2 critiques Castalia's approach to defining 'promotion of a material increase in competition';
- section 3 comments on Castalia's approach to assessing whether the DBCT service satisfies criterion (a); and
- section 4 summarises DBCTM's binding access framework and explains why the implementation of this framework addresses the concerns raised in the Castalia report.



## 2. Defining the promotion of competition

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In this section we examine Castalia's approach to interpreting the 'promotion of competition' element of criterion (a).

### 2.1 Castalia has not defined promotion of material increase in competition

Criterion (a) requires an assessment of whether declaration of the DBCT service would result in the 'promotion of a material increase in competition' in a dependent market. In order to make any assessment as to whether criterion (a) is satisfied, it is important to be clear as to the economic interpretation of this term.

#### 2.1.1 Our interpretation

In our earlier report, we explained that the promotion of a material increase in competition in a dependent market as a result of declaration requires that:<sup>5</sup>

- the structure of the market or conduct of firms is changed in a way that can be expected to bring about a material enhancement to the competitive process; and
- the volume and/or quality of output in the market is expected to increase.

#### 2.1.2 Castalia's interpretation

The Castalia report initially points to the Sydney Airport decision of the Competition Tribunal for guidance on the meaning of promotion of a material increase in competition, stating that:<sup>6</sup>

[application of criterion (a)] ... requires identification of the relevant upstream and downstream market(s) and a determination of whether (to use the words of the Australian Competition Tribunal in the Sydney Airports decision): 'the opportunities and environment for competition given declaration, will be better than they would be without declaration'.

One clear way of evidencing that is identifying a dependent market where DBCT's behaviour, in the absence of a declaration, would affect the competitive process and distort the outcomes of competition.

However, Castalia omits to describe either what such a 'distortion of outcomes' might look like or how significant any such distortion must be before its prevention would 'promote a material increase in competition' in a market.

Castalia goes on to say that:<sup>7</sup>

A priori, there is likelihood that competition could be affected if the service provider is vertically integrated into upstream and downstream markets. In the absence of vertical integration, other factors need to be present to cause exercise of monopoly power in the absence of declaration to cause a decrease of competition. Of particular importance would be any factors that resulted in differences in treatment of participants in the market that may distort demand or supply from that which would exist where there was effective competition in the market.

One implication of this statement by Castalia is that, for declaration to promote a material increase in competition, the dependent market in question must not be effectively competitive in the absence of declaration – otherwise, sustained distortion of outcomes in a market would not be possible. We also made

<sup>5</sup> HoustonKemp, *Does DBCT's coal handling service satisfy criterion (a)?* May 2018, p 18.

<sup>6</sup> Castalia, *Dalrymple Bay coal terminal: Economic analysis of declaration criteria*, May 2018, p 4.

<sup>7</sup> Castalia, *Dalrymple Bay coal terminal: Economic analysis of declaration criteria*, May 2018, p 4.

this point in our earlier report – there is no need for government intervention to constrain firms' market power in an effectively competitive market.<sup>8</sup>

We describe in section 3.2 below that because DBCTM is not vertically integrated into other functional markets in the supply chain, it has no incentive to treat any particular user differently from another so as to cause a distortion in any related markets. Rather, a vertically separate provider of services generally has an incentive to treat its customers or users in a manner that maximises competition between them. The overlooking of these principles is a core problem with Castalia's logic, as we explain further in section 3.2.

Finally, in establishing its framework for analysis of criterion (a) as it applies to DBCT, Castalia states that it will:<sup>9</sup>

...show that, absent continued declaration, the level of competition would be materially decreased.

This appears to be a further and different (and more demanding) economic interpretation of criterion (a) than those referenced elsewhere by Castalia, which we identify above. For the 'with and without' declaration assessment the three different concepts referenced by Castalia can be summarised as:

- 'the opportunities and environment for competition will be better';
- 'factors that may distort demand or supply from that which would exist if there was effective competition' and
- 'the level of competition (absent declaration) would be materially decreased'.

One consequence of its mixed discussion of the economic interpretation of criterion (a) is that it remains opaque as to exactly what Castalia considers would constitute a 'promotion of a material increase in competition'.

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<sup>8</sup> HoustonKemp, *Does DBCT's coal handling service satisfy criterion (a)?* 29 May 2018, p 9.

<sup>9</sup> Castalia, *Dalrymple Bay coal terminal: Economic analysis of declaration criteria*, May 2018, p 5.

### 3. Castalia's approach to criterion (a)

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The Castalia report focuses on two markets where it considers that declaration of the service would promote a material increase in competition, being the tenement market and the secondary capacity for coal loading services market. This section summarises our understanding of the reasoning underpinning the conclusion drawn by Castalia in relation to each market and presents our analysis of that reasoning. We also discuss the matters raised in the DBCT User Group submission in relation to one further market, being that for coal haulage services.

Castalia contends that, without declaration, discrimination between incumbent and new entrant miners would give rise to 'distortions' to competition in related markets, including the market for tenements. It likens this to the circumstance of a vertically integrated monopoly provider of access.

Our analysis shows that Castalia's conclusions are drawn from an incorrect application of economic principles to the circumstances that would apply without declaration in these markets. Castalia does not demonstrate that declaration of the DBCT service would result in a promotion of a material increase in competition in either of these markets.

In relation to the market for tenements:

- Castalia's comparison of the circumstances at DBCT to those of a vertically integrated monopoly provider of access are inapt, since DBCTM has no incentive to act in a way which would distort competition in downstream markets;
- the geographic boundary of the market for tenements postulated by Castalia is limited to the Hay Point catchment – whereas, within a more appropriately defined market, the prices charged by DBCT would not be expected to materially affect competition for tenements;
- Castalia's analysis turns on an assumption that the expiry of declaration would introduce asymmetry in pricing between incumbent and new entrant miners – this is not the case since there is already an asymmetry between the price for existing capacity and the price for expanded capacity at DBCT under declaration, and this would not change without declaration; and
- Castalia's analysis also turns on an assumption that a material number of new entrant miners in its postulated Hay Point market for tenements would be exposed to the effects of any distortions – whereas, given the capacity constraints at DBCT it is likely that the extent of new entrants in this market that are served by existing capacity will be negligible.

In relation to the market for secondary trading, Castalia does not explain why DBCTM would alter its conduct without declaration so as to charge fees for, or limit, the ability of its customers to engage in such trades. Declaration does not itself constrain DBCTM from engaging in such conduct. Nevertheless, DBCTM has indicated in its Draft Amending Access Undertaking submitted to the QCA on 27 June 2018 that its related body corporate will exit the secondary market completely as at 1 September 2018. This would appear to render this potential concern – even if valid – as no longer relevant.

The remainder of this report explores the implications for Castalia's analysis of the access framework proposed by DBCTM, which ensures that the price of the DBCT service is constrained such that the use of DBCT remains the same with or without declaration.

#### 3.1 Castalia's finding as to competition in the market for tenements

Castalia defines a market for the supply and acquisition of rights to explore for or develop resources of coking coal, thermal coal or both in the 'Hay Point catchment'.

Castalia contends that declaration imposes two types of constraints on DBCTM's conduct, being constraints:

- on 'the exercise of monopoly power to raise prices'; and
- on 'vertical price and non-price discrimination'.<sup>10</sup>

Castalia states that the absence of declaration would 'create two classes of tenement acquirers among potential DBCT users', where those with existing capacity contracts with DBCT are somewhat protected by arbitration clauses in their existing contracts from future price rises, while new access seekers face unconstrained monopoly behaviour.<sup>11</sup>

Castalia likens this situation to one of vertical integration, in which some access seekers are provided preferential terms. In particular, Castalia contends that new entrants would be materially disadvantaged by having to negotiate terms and conditions of access with an unconstrained monopolist, DBCTM, which is incentivised to maximise price and non-price terms in its own favour.

According to the Castalia report, the result of the disadvantage to new users is that (new user) demand for tenements in the Hay Point catchment will diminish, while supply of tenements by existing users will also fall since existing users (of DBCT) now value the tenements more highly than potential new users at DBCT, given that the latter face a higher total supply chain cost. As a result:

- bids for new tenements will be largely restricted to incumbents while bids from new entrants 'will not be able to compete on price';<sup>12</sup> and
- demand for thermal only tenements will fall because it is the relatively less valuable resource, and market participants will prefer to focus on higher value coking coal projects.

Castalia concludes that declaration would promote a material increase in competition in the market for tenements in the Hay Point catchment, such that criterion (a) would be satisfied.

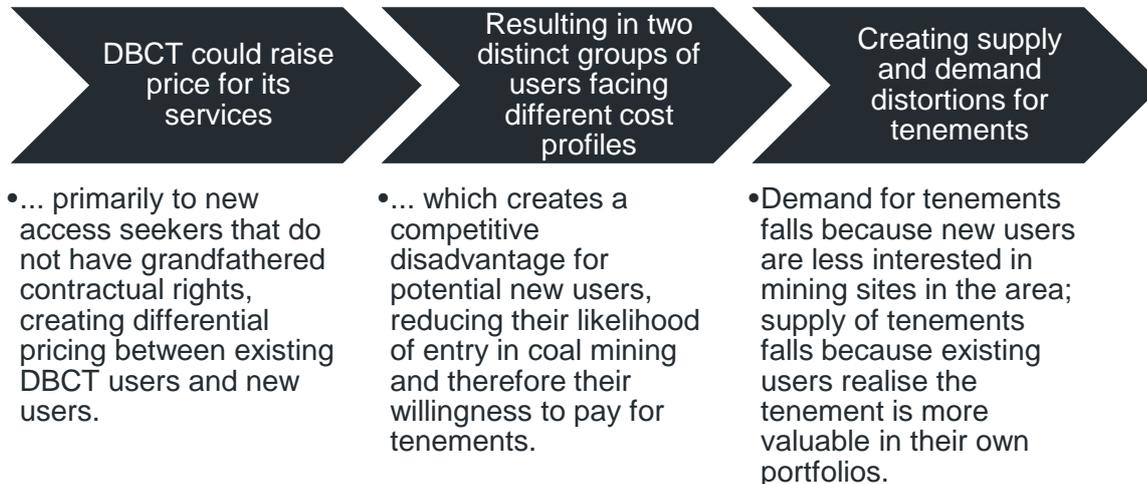
Figure 3:1 below summarises the logic that underpins Castalia's conclusion.

<sup>10</sup> Castalia, *Dalrymple Bay coal terminal: Economic analysis of declaration criteria*, May 2018, p 10.

<sup>11</sup> Castalia, *Dalrymple Bay coal terminal: Economic analysis of declaration criteria*, May 2018, p 10.

<sup>12</sup> Castalia, *Dalrymple Bay coal terminal: Economic analysis of declaration criteria*, May 2018, p 19.

Figure 3:1 Summary of Castalia's logic for competitive harm in the tenements market



### 3.2 Comparisons to vertical integration are inapt

Castalia likens the situation in which incumbent and new entrant users of DBCT access the service on different terms and conditions to the outcome of vertical integration in which an upstream monopoly provider of access favours its downstream affiliate. This comparison is inapt.

When an upstream firm that provides a bottleneck service also competes in a downstream market, it may face incentives to provide access to the service on a preferential basis to its downstream affiliate, foreclosing or disadvantaging its rivals in the downstream market. These incentives may arise if the combined firm can increase its profits by capturing a greater share of the downstream market and/or causing a reduction of competition in that market.

There is no similarity between this standard theory of harm arising from control of a bottleneck facility by a firm that is also present in a downstream market, and the circumstances cited by Castalia in respect of DBCT and its users. DBCTM is not active in mining operations and faces no incentives to provide access on a preferential basis to any of its users.

The prospect of different prices being set for different users of DBCT cited by Castalia does not result from actions pursued by DBCTM. Rather, it results from the existence of long term contracts that Castalia claims will manifest in a way so as to benefit existing customers. There is some irony in the fact that these arrangements, which Castalia assumes would operate to benefit DBCT's existing users, are being raised on behalf of those users as an example of distortionary pricing at DBCT. Elsewhere, incumbent users have been strong advocates that any expansions to DBCT capacity be priced differently from existing capacity.<sup>13</sup>

It is also important to note that the prospect of different prices for different users of DBCT arises not only because of the terms of existing contracts, but also from application of the regulatory regime applied by the QCA under declaration. In section 3.3.2 we explain that differential prices are likely to apply to any expansions undertaken at DBCT in the future.

<sup>13</sup> See, for example, DBCT User Group submission to the QCA on the 2015 Draft Amending Access Undertaking (DAAU), p 24.

Further, DBCTM does not stand to benefit from inducing any 'distortion' in downstream markets, beyond the entirely unexceptional benefit that any firm would experience from being able to charge higher prices, whether vertically integrated or otherwise. To the extent that differential pricing gives rise to situations in which higher cost incumbent miners are able to operate to the exclusion of lower cost new entrants, this does not benefit DBCTM. Rather, to the extent that its customers may be willing to pay less for its services, in aggregate, than would otherwise be the case, such arrangements are more likely to harm DBCT.

In conclusion, there is no similarity in either circumstances or outcomes as between the market in which the DBCT service is presently provided (with or without declaration) and a market in which a vertically integrated monopoly supplies any form of access service.

### 3.3 Differential terms for new users do not distort competition for tenements

Castalia's analysis turns on the proposition that, without declaration, there exists two classes of potential DBCT users, and the potential difference in the terms and conditions of access to DBCT between these groups gives rise to distortions in the market for tenements.

However, this proposition relies on three assumptions that cannot be made out, being that:

- the geographic market for tenements is limited to the Hay Point catchment – whereas within a more appropriately defined market, the prices charged by DBCTM would not be expected to have a material effect on competition for tenements;
- the expiry of declaration would introduce asymmetry in pricing between incumbent and new entrant miners – however, under declaration, there is already likely to be asymmetry between the price for existing capacity and the price for any expanded capacity at DBCT; and
- that there would be a material number of new entrant miners in the proposed Hay Point market for tenements that would be exposed to the effects of any distortions – whereas, given the capacity constraints at DBCT it is likely that the participation of new entrants in this market will be negligible.

We explain the basis for these views in more detail below.

#### 3.3.1 Castalia adopts an overly narrow geographic market

Castalia's key proposition rests upon the assumption that a market for tenements can be defined within the limited geographic confines of the Hay Point catchment, and that the price for access to DBCT has material consequences for competition in this market. However, this assumption cannot reasonably be sustained by reference to conventional approaches to market definition. Rather, the market for tenements is likely to encompass a substantially wider geographic region, such that the pricing adopted at DBCT cannot reasonably be said to be material to competition outcomes in this broader market. We explain the basis for these conclusions below.

Castalia notes that the demand for tenements depend on a variety of factors, including:<sup>14</sup>

- the long run average resource price for the period of production;
- the capital and operating costs of developing and operating the mine – affected by the quality of the resource; and
- the total cost of the logistics chain from mine to port and ship loading.

In other words, the price for the DBCT service is only one relevant factor (among several) to the demand for tenements.

If the proposition that an increase in the price for access to the DBCT service may reduce the expected profitability of tenements that may be developed into mines that would then become potential customers of

<sup>14</sup> Castalia, *Dalrymple Bay coal terminal: Economic analysis of declaration criteria*, May 2018, p 7.

the DBCT service was accepted, it does not follow that competition in the market for tenements is harmed by this action.

Under the hypothetical monopolist test, a candidate market is taken to be defined if a hypothetical monopolist controlling all suppliers serving the geographic area of the candidate market is profitably able to impose a small but significant non-transitory increase in price (SSNIP) of five to ten per cent. However, if the SSNIP is defeated by substitution towards suppliers that were not presumed to be in the candidate market, then the market must expand to accommodate these additional suppliers.

Applying this framework to the market nominated by Castalia,<sup>15</sup> a monopolist seller of tenements in the Hay Point catchment would not profitably be able to impose increases in the price of tenements. However, the buyers of tenements are investors who face a vast array of choices about where to acquire the rights to potential resources. There are no special circumstances prevailing in the region around Hay Point that would imply investors could not substitute towards opportunities in other areas in Central Queensland.

In our opinion, Castalia's view that the geographic dimension of a market for tenements is limited to the Hay Point catchment has not been tested by reference to the conventional framework for making such assessments, and cannot reasonably be sustained.

Our reasoning is supported by the Australian Competition Tribunal's reasoning in *Fortescue Metals*:<sup>16</sup>

Examining a map of tenements in the Pilbara, it is obvious that tenement purchasers (whether outright or partial purchasers) have not confined themselves to buying tenements around a specific railway line. This provides strong evidence that a monopoly seller of tenements around a specific line could not profitably apply a price increase because buyers would substitute to other tenements. Further, a monopsony buyer of tenements around a specific line could not profitably decrease price because sellers would easily find a purchaser outside this geographical area.

The consequence of the geographic scope of the market for tenements being likely to extend beyond the Hay Point catchment (to, say, Central Queensland) is that the actions of DBCTM at Hay Point are unlikely to be material to this broader market for tenements.

If Castalia's overly narrow market definition is set aside, then the market for tenements is not a dependent market in which declaration of the DBCT would promote a material increase in competition.

### 3.3.2 Differential prices for capacity are not an outcome of declaration

Castalia contends that, without declaration, new entrants will be disadvantaged in bidding for new tenements.<sup>17</sup> This claim turns on the assumption that, under declaration, new entrant miners can gain access to DBCT on the same terms as incumbent miners. It also assumes that incumbent miners have access to additional capacity on similar terms as those upon which they access existing capacity. These assumptions are not borne out by the facts.

DBCT is currently contracted to near capacity. Looking forward, we understand that even if none of the current access seekers (that DBCT presently expects to proceed to finalise contracts for available capacity) take up capacity, existing contracts and anticipated renewals are expected to comprise on average around 77 mtpa of DBCT's total 85 mtpa capacity. It follows that there is little or no prospect that either new entrant miners or incumbents will be able to enter into contracts with DBCT for existing capacity on the prevailing regulated rates in the near future (irrespective of DBCT's declaration status).

<sup>15</sup> Castalia, *Dalrymple Bay coal terminal: Economic analysis of declaration criteria*, May 2018, p 8.

<sup>16</sup> Australian Competition Tribunal, *In the matter of Fortescue Metals Group Limited [2010] ACompT 2*, 30 June 2010, p 258, paras 1118-1119. This decision relates to iron ore, a similar commodity resource.

<sup>17</sup> Castalia, *Dalrymple Bay coal terminal: Economic analysis of declaration criteria*, May 2018, p 19.

In the event DBCT was to be expanded, the price for access to expanded capacity at DBCT is unlikely to be the same as that for existing capacity. Under the current access undertaking, expansions to terminal capacity may either be:<sup>18</sup>

- 'socialised' such that the costs of existing and expanded capacity at the terminal are pooled, with a single price determined across the combined capacity; or
- 'differentiated', such that the costs of existing and expanded capacity at the terminal are split, with separate prices determined for each tranche of capacity.

The access undertaking provides that an expansion will be socialised if doing so would either decrease prices for users of the existing terminal or where the special nature and circumstances of cost-sensitive expansions justify socialisation.<sup>19</sup> It follows that, if the annualised unit costs associated with the construction and operation of a terminal expansion are lower than the terminal infrastructure charge (TIC) for the existing terminal, then that expansion will be socialised. Otherwise, it will be differentiated.

The available evidence suggests it is highly unlikely that any expansion of capacity at DBCT would meet the conditions necessary for its pricing to be socialised. As at 1 July 2018, the TIC applying to existing capacity is \$2.62 per tonne. By comparison, the potential expansion opportunities disclosed by DBCTM are far costlier when compared on a like-for-like basis. PwC's report assesses these costs, expressed in annualised and unitised terms assuming full utilisation of each expansion, as:<sup>20</sup>

- \$8.30 per tonne in respect of the Zone 4 expansion;
- \$6.19 per tonne in respect of the combined Zone 4 and 8X expansions; and
- \$7.32 per tonne in respect of the combined Zone 4, 8X and 9X expansions.

On these estimates, under declaration new entrant miners are only likely to be able to access capacity at DBCT at prices that may be two or three times the prices faced by incumbent miners. Further, even to achieve this access will require a lengthy process before the expansion can be investigated, approved and constructed.<sup>21</sup>

Castalia states that, in the absence of declaration:<sup>22</sup>

Bids for new tenements will largely come from incumbents as they have access through existing contracts at arbitrated prices. Bids from new entrants will be at a significant disadvantage as they will not be able to compete on price and will have a more complex process to negotiate access.

Both new entrants and incumbents will be less likely to bid for thermal only tenements...

This statement seems unlikely to be true. The only way that 'incumbents [which]...have access through existing contracts at arbitrated prices' could use any benefit of those contracts to bid for new tenements would be if either the particular new tenement just happened to become available at exactly the same time as an existing mine was reaching the end of its economic life or DBCT had unallocated capacity available and an existing user was first in the queue and allowed to increase its contracted tonnage.<sup>23</sup> Otherwise, it can be presumed that 'incumbents' are continuing to use their 'access through existing contracts at arbitrated prices' to serve their existing needs.

<sup>18</sup> DBCTM, *Dalrymple Bay Coal Terminal Access Undertaking*, 2017, clause 11.1.

<sup>19</sup> DBCTM, *Dalrymple Bay Coal Terminal Access Undertaking*, 2017, clause 11.13(a) and (c).

<sup>20</sup> PwC, *Dalrymple Bay Coal Terminal User Group: 2018 access declaration review*, May 2018, p 57.

<sup>21</sup> DBCTM, *DBCT declaration review: DBCT Management submission to the QCA*, 30 May 2018, Appendix 15.

<sup>22</sup> Castalia, *Dalrymple Bay coal terminal: Economic analysis of declaration criteria*, May 2018, p 19.

<sup>23</sup> Section 11.1 of DBCT's Standard Access Agreement provides existing users with the ability to seek to increase their contracted tonnage, which DBCTM may allow subject to a number of factors including the availability of unallocated terminal capacity.

In any case, these conditions will apply equally for the situation with declaration as they would without declaration. In other words, Castalia does not show that declaration will alter (let alone alleviate) any asymmetry in pricing between new and incumbent miners. Further, Castalia does not establish how an incumbent would be advantaged in the market for tenements with or without declaration and, even if it was, how this could cause a material change to competition in a properly defined tenements market.

### 3.3.3 The class of new potential users is small relative to the class of existing users

Castalia's contentions regarding the prospects for distortion in the tenements market do not contemplate the impact of the likely quantum of relative contribution to demand for services provided by DBCT from the two classes of users that it identifies – incumbent and new entrant miners. Castalia is silent as to whether the distortion in the tenements market that it contends would materialise would be affected if the class of new potential users without existing contractual rights is very small relative to the group of existing users. In fact, the likely proportion of new entrant miners is expected to approach zero at certain times over the relevant period.

DBCT's existing and planned contractual obligations are expected to result in the terminal having very limited spare capacity, as noted in section 3.3.2 above. It follows that, irrespective of DBCT's declaration status, potential buyers in the tenements market (that are also potential new entrant purchasers in the market for DBCT's service) are unlikely to rely on access to existing capacity at DBCT in determining their willingness to invest in a tenement – since DBCT does not have existing capacity to service new users.

Put differently, under declaration, the number of potential buyers of tenements in the Hay Point catchment that might reasonably expect to access (existing capacity for) the DBCT service is very small, and possibly zero. It follows that, assuming the distortion contended for by Castalia is a relevant consideration, the impact of declaration on demand for tenements would therefore be correspondingly small. It is not obvious that this impact on demand would meet the standard for promotion of a material increase in competition, even in the narrow market for tenements asserted by Castalia.

We explain in section 2.1.2 above (and in detail in our previous report)<sup>24</sup> that a market which is (or would be) effectively competitive in absence of declaration is unlikely to be considered a dependent market for which declaration would promote a material increase in competition. If the field of potential new entrants in the market for tenements is very small relative to existing users of DBCT, then it is unlikely that competitive conditions in the tenements market as defined by Castalia would alter at all in absence of declaration.

## 3.4 Secondary trading of capacity

The Castalia report also identifies a market for the secondary trading of DBCT capacity. It claims that declaration would promote a material increase in competition in this market since, in the absence of declaration, DBCTM would have an incentive to:

- charge a fee in respect of any secondary capacity trades; and/or
- limit or restrict the ability of contracted users to engage in secondary trading of unused capacity under take or pay contracts.<sup>25</sup>

It is important to note that there are no changes to institutional arrangements that would be expected to give rise to the conduct contended by Castalia. Castalia fails to take into account the following market observations:

- DBCTM currently facilitates secondary trading through its affiliate, Brookfield Port Capacity (BPC) – however, BPC will exit the secondary market completely as at 1 September 2018, as set out in DBCTM's Draft Amending Access Undertaking, submitted to the QCA on 27 June 2018;

<sup>24</sup> HoustonKemp, *Does DBCT's coal handling service satisfy criterion (a)?* 29 May 2018, section 3, pp 11-18.

<sup>25</sup> Castalia, *Dalrymple Bay coal terminal: Economic analysis of declaration criteria*, May 2018, p 21.

- alongside secondary trading through BPC, DBCTM provides for secondary capacity trades that have been agreed directly between third parties – over the last three years, approximately 93 per cent of total secondary trades were made directly between parties;<sup>26</sup> and
- DBCTM has never withheld consent for a secondary trade of capacity, and there is no reason to expect that its willingness to provide for such trading would be affected with or without declaration (and Castalia does not offer any such reason).

In addition, the arrangements that DBCTM proposes to apply when declaration expires will also serve to eliminate any incentive for DBCTM to take the actions cited by Castalia. We explain these arrangements and their effects at section 4.3.

### 3.5 Coal haulage in Central Queensland

The DBCT User Group identified rail haulage in central Queensland as a dependent market for which declaration would promote a material increase in competition, although Castalia's report does not comment on this dependent market.

Our earlier report addressed this market.<sup>27</sup> We discussed in detail that the volume of coal in the mining supply chain and transported along each train path will not be affected by whether or not the DBCT service is declared. It follows that under any market definition for coal haulage services, the volume supplied in that market would also not be affected by declaration. Put differently, declaration of the DBCT service does not have any direct effect on the rail haulage market.

Given that volumes transported by each firm will not change, the structure and conduct of firms in the market are also not affected by declaration. For example, the likelihood of entry will not be impacted, the same services are required with and without declaration, and there is no reason for the quality of coal haulage services to change as a result of the declaration of the DBCT service.

We therefore concluded in our earlier report that declaration of the DBCT service would not promote a material increase in competition in any rail haulage market. None of the considerations identified in either the DBCT User Group submission or the Castalia report alter the basis for our earlier conclusion.

<sup>26</sup> DBCTM, Letter to QCA dated 27 June 2018 'DBCT 2017 AU - Trading SCB DAAU', page 3 (available at <http://www.qca.org.au/getattachment/b1a2acb1-5f6b-4707-8aaa-d318c4bc7f06/DBCTM—Letter-on-Trading-SCB-DAAU.aspx>).

<sup>27</sup> HoustonKemp, *Does DBCT's coal handling service satisfy criterion (a)?* May 2018, p 34.

## 4. Effect of DBCT's proposed access framework

DBCTM has proposed an access framework that sets out the terms and conditions under which the DBCT service will be supplied if it is not declared. The proposed framework represents an important component of the case presented by DBCTM for why it does not satisfy criterion (a) – a component that was not available to Castalia and therefore could not be taken into account in its assessment of criterion (a).

In this section we consider how the terms and conditions of DBCTM's proposed access framework bear on Castalia's findings that declaration of the DBCT service would materially promote competition in the markets it identifies for Hay Point tenements and for secondary capacity. In particular, we:

- revisit the relevant terms of DBCT's proposed access framework and, in light of that framework, our conclusions as to the effect of declaration on competition in related markets;
- describe how the terms of the access framework would affect Castalia's analysis of DBCTM's ability and incentive to increase prices at DBCT;
- explain that the terms of the access framework alleviate the concerns raised by Castalia in relation to a market for the secondary trading of capacity; and
- review Castalia's concerns about an arbitrated right to access without declaration as compared to a regulated right to access with declaration.

### 4.1 Effect of DBCT's proposed access framework

Our earlier report explains that, given the access framework, declaration will not promote a material increase in competition in dependent markets. We explain below that a key function of the access framework is to set a ceiling terminal infrastructure charge (TIC) at a level that ensures the coal volumes served at DBCT do not fall if DBCT is not declared, relative to volumes under declaration.

DBCTM's proposed access framework provides that a TIC is to be agreed between DBCTM and each user. In the absence of such agreement, an arbitrator is to determine a TIC that must:<sup>28</sup>

- reflect the TIC that would be agreed between a willing but not anxious buyer and a willing but not anxious seller of coal handling services for mines that are proximate to the Port of Hay Point;
- not be less than the floor TIC, being that which would apply under a QCA administered pricing regime; and
- not be greater than the ceiling TIC, being the highest TIC at which coal volumes served at DBCT would be the same as if the floor TIC applied – with this assessment being made without reference to any contractual limitations on volumes that are able to be delivered to DBCT or any other coal terminal.

These terms ensure that:<sup>29</sup>

- the TIC can be no lower than would apply if DBCT was declared (the floor TIC); and
- the TIC can be no higher than the highest TIC at which the use of DBCT is the same as it would be if DBCT was declared (the ceiling TIC).

The direct effect of the access framework is that use of DBCT is the same at all values of the TIC within this floor and ceiling range. Put another way, the access framework ensures that declaration of the DBCT service

<sup>28</sup> HoustonKemp, *Does DBCT's coal handling service satisfy criterion (a)?* 29 May 2018, p 19.-

<sup>29</sup> HoustonKemp, *Does DBCT's coal handling service satisfy criterion (a)?* 29 May 2018, pp 19-20

would not lead to an increase in volumes at DBCT, as compared with the outcome that would apply without declaration. Since no miner would be expected to change its infrastructure usage decisions in response to declaration, it follows that declaration will also not affect the use of other facilities such as coal terminals and railway systems.<sup>30</sup>

In the absence of changes to the use of infrastructure, the structure of markets that depend on this infrastructure and the conduct of firms operating in these markets will not be affected. For example, there is no reason to suppose that the volume or quality of coal supplied in any export market will be affected by declaration. Under the access framework, non-price terms and conditions for accessing DBCT will remain substantively the same with and without declaration, and so this will not change the service provided to coal miners.<sup>31</sup>

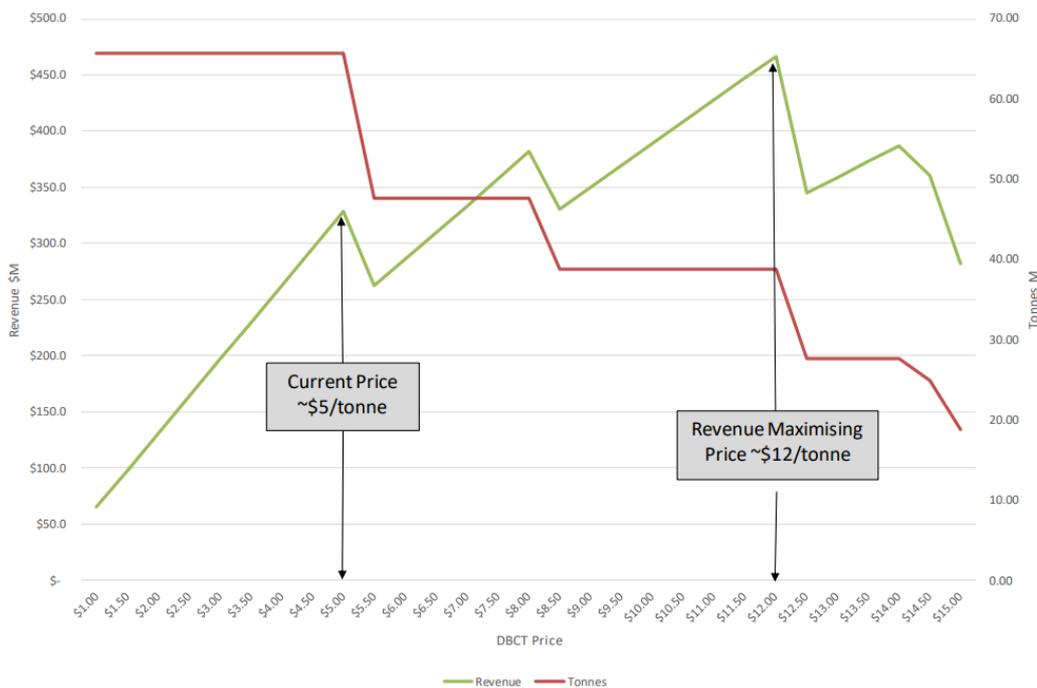
## 4.2 Access framework constrains price increases at DBCT

Castalia states that, without declaration, DBCTM will have a unilateral incentive and ability to increase prices for its coal handling service:<sup>32</sup>

...DBCTM, as a rational profit maximising monopolist, has the opportunity and the incentive to increase its charges to the point just before it becomes economic for users to switch to an alternative rail line, load and port export chain.

Castalia's analysis finds that current charges at DBCT could approximately double before alternative coal handling facilities become the lowest cost supply network.<sup>33</sup> This is demonstrated at figure 3.2 of Castalia's report, which we reproduce below.

Figure 4.1: Castalia's analysis of DBCT's throughput and revenue



Source: Castalia report, figure 3.2, p 16.

<sup>30</sup> HoustonKemp, *Does DBCT's coal handling service satisfy criterion (a)?* 29 May 2018, pp 20-21.

<sup>31</sup> HoustonKemp, *Does DBCT's coal handling service satisfy criterion (a)?* 29 May 2018, p 22.

<sup>32</sup> Castalia, *Dalrymple Bay coal terminal: Economic analysis of declaration criteria*, May 2018, p 16.

<sup>33</sup> Castalia, *Dalrymple Bay coal terminal: Economic analysis of declaration criteria*, May 2018, pp 14-16

Castalia's analysis assumes that, absent declaration, DBCT will have monopoly pricing power. It calculates that the profit maximising level of coal handling charges at DBCT is approximately \$12.00 per tonne, compared to approximately \$5.00 per tonne under declaration. At these prices, Castalia estimates that the throughput served at DBCT would be approximately 38 mtpa, considerably lower than 67 mtpa under declaration.

#### 4.2.1 Castalia's analysis of DBCT throughput and revenue

We broadly agree with Castalia's framework for analysing the response of customers to higher charges at DBCT. However, a number of the inputs that Castalia uses to populate this framework are problematic.

In particular, Castalia appears to find that about 18mtpa would no longer use DBCT in response to a \$0.50 increase to coal handling charges at DBCT. This estimate is not credible, and is inconsistent with:

- our analysis of AME and Wood Mackenzie data;
- PwC's analysis of DBCT User Group data;
- DBCTM's observations that the demand response to a recent increase in Operator charges by more than 20 per cent resulted in zero change in throughput at DBCT; and
- coal export price fluctuations of much greater magnitudes, that do not result in such drop-offs in throughput.

Taken together, Castalia's analysis appears to be at odds with the reality of demand at DBCT and appears to overstate significantly the predicted sensitivity to coal handling charges at DBCT.

#### 4.2.2 DBCT's access framework

Since the terms and conditions of the proposed access framework were not available at the time it prepared its advice, Castalia's analysis of the likely effects on competition in the tenement market and in the secondary capacity market does not take them into account. Given the substantive constraint that the proposed access framework places on the ability of DBCTM to determine the TIC, it is important to consider whether Castalia's findings would continue to hold given the proposed access framework. Our analysis shows that they would not.

Combining the access framework with Castalia's own analysis (noting our concerns with some of Castalia's demand modelling as above) illustrates how the access framework would operate so as to constrain the pricing outcomes at DBCT without declaration.

Under the proposed access framework, the TIC cannot exceed the ceiling TIC, which is defined as being *'the highest TIC at which coal volumes served at DBCT would be the same as if the floor TIC applied'*. The agreed TIC must be between the floor TIC and the ceiling TIC.

The coal volumes served at DBCT if the floor TIC applied are, on Castalia's assessment, 67 mtpa. However, figure 4.1 shows that when the TIC increases by as little as \$0.50 per tonne, volumes served at DBCT decrease dramatically, to about 49 mtpa. It follows that the ceiling TIC, on Castalia's assessment, would be at most \$0.50 per tonne higher than the floor TIC. However, we note that this \$0.50 per tonne difference between the floor and ceiling TIC is a function of Castalia's analysis, rather than an assumption about future prices.<sup>34</sup>

If the ceiling TIC exceeded the floor TIC by \$0.50 per tonne, it would not meet its own objective of ensuring that volumes at DBCT are not lower than they would be under a QCA administered pricing regime. Therefore, Castalia's analysis suggests that coal handling charges at DBCT cannot increase from \$5.00 per tonne to \$12.00 per tonne under the proposed access framework. Instead, they would increase to a

<sup>34</sup> We expect that the ceiling TIC at DBCT would exceed the floor TIC by more than \$0.50 per tonne.

maximum of \$5.50 per tonne and, in accordance with the 'willing but not anxious' concept, more likely somewhere between the floor and ceiling TIC, ie, less than \$5.50 per tonne.

Combining Castalia's analysis of throughput and revenue at DBCT with the access framework that will apply if DBCT is not declared implies that, for Castalia to be internally consistent in concluding that criterion (a) is satisfied, Castalia must demonstrate that a decrease in price from \$5.50 per tonne to \$5.00 per tonne for coal handling services at DBCT would lead to the promotion of a material increase in competition in related markets. It does not do so.

### 4.3 Access framework makes DBCTM indifferent to volume changes

Castalia raises a concern that, absent declaration, DBCTM would have the incentive and ability to affect the number of trades for secondary capacity by either or both:<sup>35</sup>

- charging a fee to consent to trades; or
- refusing consent to trades entirely.

It concludes that declaration has the effect of materially promoting competition in a market for secondary capacity trading, so that criterion (a) is satisfied.

We discussed in section 3.4 above that BPC will exit the secondary market completely by 1 September 2018. We further noted above that:

- alongside secondary trading through BPC, DBCTM provides for secondary capacity trades that have been agreed directly between third parties; and
- DBCTM has never withheld consent for a secondary trade of capacity, and there is no reason to expect that its willingness to provide for such trading would be affected with or without declaration (and Castalia does not offer any such reason).

In addition to the points above, DBCTM's proposed access framework ensures that there is no basis for the concerns outlined by Castalia, as outlined below.

The incentives cited by Castalia might arise in circumstances in which:

- there is uncontracted capacity at DBCT; and
- DBCTM would profit by affecting users' choices so as to make them more likely to enter into contracts for capacity in the primary market rather than entering into secondary capacity trades.

However, neither of these circumstances hold.

We understand that 76.3 mtpa of capacity at DBCT is currently under contract (with a ramp up profile over time), and that DBCTM expects to enter into new contracts that will further diminish its spare capacity (ultimately to 0 mtpa), as noted in section 3.3.2. At the current time, at least, there appears little prospect of the incentives raised by Castalia being realised.

Further, the operation of the proposed access framework means that DBCTM has no incentive to undertake actions that would encourage current or prospective users to seek capacity in the primary market in preference to using capacity acquired through secondary market trades. Under the proposed framework, a change in the aggregate annual contract tonnage at the terminal triggers a review event which results in an adjustment to the TIC of each user by reference to the formula:

$$TIC_t = UAF_t \times TIC_{t-1}$$

<sup>35</sup> Castalia, *Dalrymple Bay coal terminal: Economic analysis of declaration criteria*, May 2018, p 21.

where:

$TIC_t$  is the TIC in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) applicable for  $AH_u$  consequent upon the Review Event;

$UAF_t$  is the utilisation adjustment factor, which is equal to  $TUR_t / TUR_{t-1}$ ;

$TUR_t$  is the terminal utilisation ratio, calculated as follows:

(Existing Terminal Capacity or Differentially Priced Capacity (as relevant) / Aggregate Annual Contract Tonnage in respect of the Existing Terminal or Differentiated Expansion Component (as relevant));

$TUR_{t-1}$  is the TUR immediately prior to the occurrence of the Review Event;

$TUR_t$  is the TUR consequent upon the Review Event; and

$TIC_{t-1}$  is the TIC in respect of the Existing Terminal or Differentiated Expansion Component (as relevant) applicable for  $AH_u$  immediately prior to the occurrence of the Review Event.

The effect of these terms is that the overall revenue of the terminal is not affected by a change in aggregate annual contract tonnage. A substantially similar mechanism currently applies, under declaration.

In substance, these provisions mean that, under the proposed access framework, DBTCM has no incentive to undertake actions that would encourage current or prospective users to seek capacity in the primary market in preference to using capacity acquired through secondary market trades. The same situation applies to the current circumstances in which the DBCT service is declared.

It follows that, if the proposed access framework is to apply without declaration, then declaration will not promote the material increase in competition claimed by Castalia in a related market for secondary capacity trades.

## 4.4 Concerns about arbitrated right to access

Castalia raises concerns about how options for pricing at DBCT after the expiry of declaration may manifest. It notes particular concerns about the workability and desirability of providing an arbitrated right to access DBCT.

### 4.4.1 Access to arbitration would be on terms determined by DBTCM

Castalia notes that, if DBTCM were to provide access after the expiry of declaration by executing a deed or other legal instrument, this may raise other concerns because:<sup>36</sup>

We have been advised that there is doubt that such an arrangement would give a legal right to new users in all circumstances.

Any access to arbitration would be only in terms of the legal arrangement set up by DBTCM.

Again, such an arrangement would be markedly inferior to that of an approved Access Undertaking in terms of rights and certainty. It is also questionable whether it is an appropriate counterfactual to assume a position asserted in the context of the declaration review that has not been proposed previously.

The basis for Castalia's concerns about the type of arrangement that DBTCM has proposed are not clear to us. These concerns do not seem to relate to matters that are relevant to an assessment of criterion (a) and the question of whether:

<sup>36</sup> Castalia, *Dalrymple Bay coal terminal: Economic analysis of declaration criteria*, May 2018, p 18.

...access (or increased access) to the service, on reasonable terms and conditions, as a result of a declaration of the service e would promote a material increase in competition in at least 1 market (whether or not in Australia), other than the market for the service.

The fact that the access to arbitration would be on the terms of the proposed access framework prepared by DBCTM is neither a reason to conclude that criterion (a) is satisfied nor a basis upon which to conclude that the proposed arrangement would be 'markedly inferior' to the current regulatory regime overseen by the QCA.

#### 4.4.2 Arbitration would be a lengthy and expensive process

Castalia implicitly contends that arbitration would be lengthy and expensive for DBCT users (in the absence of declaration of the DBCT service), by commenting on the arbitration process at AAPT:<sup>37</sup>

We understand that the privately owned and unregulated Abbott Point coal loader provides access through a negotiation process with arbitration on parameters set by Abbott Point. We have been told that the process has been lengthy, and each renegotiation has proceeded to arbitration or resulted in confidential settlement which may be on different pricing for different users or both.

Any process culminating in a regulatory or arbitral determination of the price for coal handling services at DBCT is likely to reflect the large economic value of the transactions involved and the strong economic interests of:

- users to achieve a lower price; and
- DBCTM to achieve a higher price.

It is unrealistic to expect that any such process will not be lengthy. Consistent with this expectation, the current regulatory processes are already exceedingly lengthy. For example, on 12 October 2017, the QCA formally started the process under which DBCTM is required to prepare and provide to the QCA a draft access undertaking, even though the current access undertaking will remain in force until 30 June 2021.<sup>38</sup>

To establish that an access regime outside of declaration would result in decision-making that is unreasonably lengthy would require considerations that Castalia has not undertaken: namely to undertake a careful assessment of the elapsed time under both processes. In addition, it would be necessary to assess:

- the terms and conditions of the access regime that would give rise to delays; and
- the ability for reasonable alternative approaches to providing access to avoid these delays.

#### 4.4.3 Arbitration would increase the prospect of price coordination

Castalia cites the prospect that, with the replacement of a transparent regulated price for DBCT with a confidential arbitrated outcome, there may be an increased risk of coordination between terminals to increase prices.<sup>39</sup>

This suggestion has no credible economic foundation. Price coordination is promoted by transparency and frequent interactions between relevant parties, so that the coordinating parties can monitor their respective compliance with the explicit or implicit coordination strategy. It is not plausible to suggest that the removal of a transparent price benchmark at DBCT will promote coordination between terminals.

In any case, price coordination will only provide benefits to coordinating parties in circumstances in which competition plays a role in restraining the prices that these parties could otherwise determine. Castalia does

<sup>37</sup> Castalia, *Dalrymple Bay coal terminal: Economic analysis of declaration criteria*, May 2018, p 18. We note that since the processes by which any disputes at AAPT have been resolved, and their outcomes, are confidential, the basis and accuracy of Castalia's contention is unclear.

<sup>38</sup> QCA, *Initial undertaking notice*, 12 October 2017.

<sup>39</sup> Castalia, *Dalrymple Bay coal terminal: Economic analysis of declaration criteria*, May 2018, p 18.

not reconcile how its concerns about price coordination may manifest when it also describes DBCT as a 'profit maximising monopolist' that would not face competitive constraints on its price after the expiry of declaration.<sup>40</sup>

Finally we note that the provisions of the *Competition and Consumer Act 2010* would apply to inhibit anti-competitive coordination or price fixing.

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<sup>40</sup> Castalia, *Dalrymple Bay coal terminal: Economic analysis of declaration criteria*, May 2018, p 16.

## 5. Declaration

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We are pleased to confirm that in relation to the analysis presented and the conclusions drawn in our report:

- the factual matters set out in our report are, as far as we know, true;
- in preparing this report, we have made all the enquiries we consider appropriate; and
- that the opinions stated in our report are genuinely held by us and that our report contains reference to all matters that we consider significant.

Greg Houston / Daniel Young / Bronwyn McDonald  
13 July 2018

# Annexure 1      Curricula vitae

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## Greg Houston

### Partner

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### Overview

Greg Houston is a founding partner of the firm of expert economists, HoustonKemp. He has twenty five years' experience in the economic analysis of markets and the provision of expert advice in litigation, business strategy, and policy contexts. His career as a consulting economist was preceded by periods working in a financial institution and for government.

Greg has directed a wide range of financial, competition and regulatory economics assignments during this consulting career. His work in the Asia Pacific region principally revolves around the activities of the enforcement and regulatory agencies responsible for these areas, many of whom also number amongst his clients. On competition and antitrust matters he has advised clients on merger clearance processes, competition proceedings involving allegations of anticompetitive conduct ranging from predatory pricing, anti-competitive agreements, anti-competitive bundling and price fixing. Greg also has deep experience of infrastructure access regulation matters, and intellectual property and damages valuation. In his securities and finance work Greg has advised clients on a large number of securities class actions, as well as market manipulation and insider trading proceedings, and on cost of capital estimation.

Greg's industry experience spans the aviation, beverages, building products, cement, e-commerce, electricity and gas, forest products, grains, medical waste, mining, payments networks, office products, petroleum, ports, rail transport, retailing, scrap metal, securities markets, steel, telecommunications, thoroughbred racing, waste processing and water sectors.

Greg has acted as expert witness in valuation, antitrust and regulatory proceedings before the courts, in various arbitration and mediation processes, and before regulatory and judicial bodies in Australia, Fiji, Malaysia, New Zealand, the Philippines, Singapore, the United Kingdom and the United States.

Prior to the formation of HoustonKemp in April 2014, Greg was a Director of the global firm of consulting economists, NERA Economic Consulting, where for twelve years he served on its United States' Board of Directors, for five years on its global Management Committee and for sixteen years as head of its Australian operations.

Greg also serves on the Competition and Consumer Committee of the Law Council of Australia.

### Qualifications

**1982**                      **University of Canterbury, New Zealand**  
B.Sc. (First Class Honours) in Economics

## Prizes and scholarships

1980 University Junior Scholarship, New Zealand

## Career details

**2014-** **HoustonKemp Economists**  
Partner, Sydney, Australia

**1989-2014** **NERA Economic Consulting**  
Director (1998-2014)  
London, United Kingdom (1989-1997)  
Sydney, Australia (1998-2014)

**1987-89** **Hambros Bank, Treasury and capital markets**  
Financial Economist, London, United Kingdom

**1983-86** **The Treasury, Finance sector policy**  
Investigating Officer, Wellington, New Zealand

## Project experience<sup>1</sup>

### Competition, access and mergers

**2018** **Queensland Rail**  
**Access to facilities**  
Advice in relation to the Queensland Competition Authority's review of the presently declared status of services provided by QR's five rail networks.

**2018** **Westpac Banking Corporation**  
**Competition analysis**  
Expert report prepared for the Productivity Commission in response to the draft finding in its banking competition inquiry that each of Australia's banks holds substantial market power.

**2017-18** **Ashurst/Confidential client**  
**Anti-competitive bundling**  
Advice in relation to an ACCC investigation of bundled discounts that are alleged to have had an anti-competitive effect.

**2018** **DLA Piper/DBCT Management**  
**Access to facilities**  
Expert reports submitted to the Queensland Competition Authority's review of the presently declared status of services provided by the Dalrymple Bay Coal Terminal.

**2017-18** **Gilbert + Tobin/Confidential client**  
**Alleged cartel conduct**  
Advice in relation to an ACCC investigation of alleged cartel conduct.

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<sup>1</sup> Past ten years only.

- 2017-18**            **Wilson Harle/Confidential client**  
**Competitive effects of merger**  
Advice in relation to a Commerce Commission investigation of an already completed merger transaction.
- 2017-18**            **King & Wood Mallesons**  
**Competition analysis**  
Advice to a major digital platform service provider on potential competition concerns arising in the ACCC's digital platforms inquiry.
- 2017**                **Minter Ellison Rudd Watts/Complete Office Supplies**  
**Competitive effects of merger**  
Expert reports submitted in High Court of New Zealand proceedings concerning the proposed acquisition of OfficeMax by Platinum Equity injunction.
- 2017**                **Minter Ellison/CrownBet**  
**Merger authorisation**  
Expert reports and testimony in Competition Tribunal proceedings concerning the proposed acquisition of Tatts by Tabcorp.
- 2016**                **Bird & Bird/Generic Health**  
**Competitive effects of patent infringement**  
Expert reports and testimony in Federal Court proceedings concerning the damages arising from infringement of a pharmaceutical patent.
- 2016**                **Manildra Group**  
**Competition analysis**  
Advice and preparation of an expert report assessing competitive constraints in the supply of fuel grade ethanol.
- 2016**                **Clayton Utz/Anglo American**  
**Competitive effects analysis**  
Expert reports assessing the economic impact on the equine critical industry cluster if certain thoroughbred breeding operations were to leave the Upper Hunter.
- 2014-16**            **Ashurst and Gilbert + Tobin/Confidential client**  
**Competitive effects of agreements**  
Analysis and advice prepared in context of an ACCC investigation of agreements between a supplier and its major customers that are alleged to harm competition.
- 2015-16**            **King & Wood Mallesons/Confidential client**  
**Competition analysis**  
Analysis and advice in the context of the ACCC's inquiry into eastern and southern Australia wholesale gas prices.
- 2015**                **Port of Newcastle Operations**  
**Access to facilities**  
Expert report submitted to the National Competition Council on matters arising in the applying the criteria for declaration under Part IIIA, in the context of the application by Glencore for declaration of services provided by the Port of Newcastle.
- 2015**                **Corrs/Confidential client**  
**Merger clearance**  
Analysis, advice and expert report submitted to the ACCC in the context of a proposed acquisition in the office products sector.

- 2014-15**                    **Australian Government Solicitor/Commonwealth of Australia**  
**Competition and trade analysis**  
Expert report on competition and trade in tobacco products, prepared in the context of the World Trade Organisation dispute settlement proceedings concerning Australia's tobacco plain packaging legislation.
- 2014-15**                    **King & Wood Mallesons/Confidential client**  
**Competitive effects of agreement**  
Analysis and advice prepared in context of an ACCC investigation of agreements between a supplier and its major customers that are alleged to harm competition.
- 2013-14**                    **Corrs/Australian Competition and Consumer Commission**  
**Effect of cartel conduct**  
Expert report on the price effects of an alleged market sharing arrangement in relation to the supply of forklift gas, prepared in the context of Federal Court proceedings brought against Renegade Gas (Supagas).
- 2013-14**                    **Australian Competition and Consumer Commission**  
**Merger clearance**  
Expert report and testimony before the Competition Tribunal in the context of the ACCC's decision to oppose the acquisition of Macquarie Generation by AGL Energy.
- 2013-14**                    **Ashurst/BlueScope**  
**Merger clearance**  
Expert reports submitted to the ACCC in the context of the clearance of three approved transactions in the domestic steel industry.
- 2013-14**                    **Australian Government Solicitor/ACCC**  
**Merger clearance**  
Analysis and advice prepared in the context of the ACCC's review of the proposed acquisition of petrol retailing sites in South Australia.
- 2013**                        **Corrs/Generic Health**  
**Patent damages estimation**  
Expert report on the nature and extent of the analysis necessary to estimate damages in a patent infringement proceeding.
- 2012-13**                    **Minter Ellison/Confidential client**  
**Merger clearance**  
Expert reports submitted to the ACCC in the context of a confidential application for clearance of a proposed acquisition in the industrial gases industry.
- 2011-12**                    **Gilbert + Tobin/Pact Group**  
**Merger clearance**  
Expert reports submitted to the ACCC on the competitive implications of the proposed acquisition of plastic packaging manufacturer Viscount Plastics by Pact Group.
- 2011**                        **Gilbert + Tobin/Caltex**  
**Access to facilities**  
Expert report submitted to the National Competition Council on matters arising in the applying the criteria for declaration under Part IIIA, in the context of the application by the Board of Airline Representatives of Australia (BARA) for the declaration of services provided by the Caltex jet fuel pipeline serving Sydney airport.

- 2010-12**                    **Mallesons/APA**  
**Merger clearance**  
Expert reports submitted to the ACCC on the competitive implications of the proposed acquisition of the gas pipeline assets of Hastings Diversified Utilities Fund by APA Group.
- 2010-11**                    **Johnson Winter & Slattery/ATC and ARB**  
**Competitive effects of agreement**  
Expert reports and testimony in Federal Court proceedings concerning the competitive effects of restrictions on the use of artificial techniques in the breeding of thoroughbred horses for racing.
- 2010-11**                    **Victorian Government Solicitor/State of Victoria**  
**Competitive effects of agreement**  
Expert report prepared for the State of Victoria on the effects of certain restrictions applying to the trading of water rights on inter-state trade in the context of a constitutional challenge brought against the state of Victoria by the state of South Australia.
- 2009-11**                    **Arnold + Porter/Visa Inc, Mastercard Inc and others**  
**Payment card markets**  
Expert reports and deposition testimony on behalf of defendants in the United States Re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation, on the effects of regulatory interventions in the Australian payment cards sector.
- 2010**                        **Australian Competition and Consumer Commission**  
**NBN Points of Interconnection**  
Report and advice on the competition implications in the markets for both telecommunications backhaul and retail broadband services of different choices as to the number of 'points of interconnection' in the proposed architecture of the national broadband network.
- 2010**                        **JWS, Gilbert & Tobin/Jetset Travelworld, Stella Travel Services**  
**Merger clearance**  
Advice on the competitive implications of the merger between Jetset Travelworld and Stella Travel Services.
- 2009-10**                    **Australian Government Solicitor/ACCC**  
**Misuse of market power**  
Expert report and testimony in the context of Federal Court proceedings brought by the ACCC against Cement Australia in relation to conduct alleged to have breached sections 45, 46 and 47 of the Trade Practices Act.
- 2008-10**                    **Gilbert & Tobin/Confidential client**  
**Merger assessment**  
Advice on the competitive implications of the then proposed merger and then subsequently the proposed iron ore production joint venture between BHP Billiton and Rio Tinto.
- 2008-10**                    **Allens/Amcor**  
**Cartel damages assessment**  
Advice and preparation of an expert report on the approach to and quantification of economic loss in the context of two separate actions seeking damages arising from alleged cartel conduct.

- 2009**                    **State Solicitor’s Office/Forest Products Commission**  
**Alleged breach of s46**  
Expert advice in the context of Federal Court proceedings alleging breaches of section 46 of the Trade Practices Act.
- 2009**                    **Clayton Utz/Confidential client**  
**Joint venture arrangement**  
Reviewed the competitive implications under s50 of the Trade Practices Act of a proposed joint venture transaction in the rail industry.
- 2009**                    **Blake Dawson Waldron/Airservices**  
**Effect of potential industrial action by Air Traffic Controllers**  
Expert report in the context of a potential application to the Australian Industrial Relations Commission for termination or suspension of a bargaining period addressing the economic effect that certain forms of industrial action by Air Traffic Controllers would be likely to have on passengers, businesses, and the Australian economy.
- 2005-06, 08-09**      **Phillips Fox/Fortescue Metals Group**  
**Access to facilities**  
Expert report and testimony in the Federal Court proceedings concerning whether or not access to the BHP Billiton and Rio Tinto rail lines, serving iron ore export markets in the Pilbara, amounted to use of a production process. Subsequently, prepared expert reports on matters arising in interpreting the criteria for declaration under Part IIIA, and testified before the Competition Tribunal in late 2009.
- 2009**                    **Clayton Utz/Confidential client**  
**Competitive implications of agreement**  
Advice on the competitive effects of a joint venture arrangement in the port terminal sector, in the context of Federal Court proceedings brought by the ACCC under section 45 of the Trade Practices Act.
- 2009**                    **Australian Competition and Consumer Commission**  
**Competitive effects of buy-sell agreements**  
Advice to the ACCC on the extent to which buy-sell arrangements between the four major refiner-marketers of petroleum products in Australia may be inhibiting competition in a relevant market.
- 2008-09**              **Watson Mangioni/ICS Global**  
**Alleged misuse of market power**  
Expert report prepared in the context of Federal Court proceedings alleging breaches of section 46 of the Trade Practices Act.
- 2008-09**              **Australian Competition and Consumer Commission**  
**Competitive effects of various agreements**  
Expert advice on potential theories of competitive harm arising from agreements between competitors in the oil and gas, and petroleum retailing industry sectors.
- 2008**                    **Johnson Winter & Slattery/Pepsico**  
**Merger analysis**  
Advice on the competitive implications certain potential transactions in the soft drinks sector.

- 2008**                    **Australian Competition and Consumer Commission**  
**Exemption from access undertaking**  
'Peer review' report of the ACCC's draft decision on applications by Telstra for exemption from its standard access obligations (SAOs) for the supply by resale of the local carriage service (LCS) and wholesale line rental (WLR) in 387 exchange service areas in metropolitan Australia.
- 2008**                    **Deacons/eBay**  
**Exclusive dealing notification**  
Expert report submitted to the ACCC analysing the competitive effects of eBay's proposal that users of its online marketplace be required to settle transactions using eBay's associated entity, PayPal
- 2007-08**                **Australian Energy Market Commission**  
**Wholesale market implications for retail competition**  
Provided an overview of the operation and structure of the wholesale gas and electricity markets within the National Electricity Market (NEM) jurisdictions and identified issues the AEMC should consider when assessing the influence of the wholesale markets on competition within retail gas markets.

## Regulatory analysis

- 2017-18**                **King & Wood Mallesons/Tasmania Gas Pipeline**  
**Gas pipeline arbitration arrangements**  
Expert reports on economic aspects of the Part 23 regime arbitration with Hydro Tasmania on the terms of access to the Tasmanian Gas Pipeline.
- 2017-18**                **Victorian and South Australian electricity distribution networks**  
**Productivity adjustments**  
Expert report on the conceptual and empirical basis for pre-emptive productivity adjustments to DNSPs' projected operating expenditure.
- 2017-18**                **Jemena**  
**Gas pipeline arbitration arrangements**  
Advice and analysis in relation to the new rules for arbitration of prices for services provided by non-scheme gas pipelines.
- 2016-2018**            **APA Group**  
**Gas market reform**  
Expert reports submitted to the Gas Market Reform Group in the context of its review of the gas pipeline coverage criteria, and the proposal to introduce the compulsory auction of contracted but un-nominated gas pipeline capacity.
- 2016-2017**            **Minter Ellison Rudd Watts/Trustpower, New Zealand**  
**Transmission pricing methodology**  
Expert reports submitted to the Electricity Authority and to the High Court of New Zealand in relation to proposed reforms to the transmission pricing methodology and the distributed generation pricing principles.
- 2016**                    **Johnson Winter & Slattery/Australian Gas Networks**  
**Materially preferable decision**  
Expert report reviewing whether aspects of the Australian Energy Regulator's (AER's) draft access arrangement decision would be likely to result in a materially preferable decision in terms of achievement of the national gas objective.

- 2015-17**                    **Government of New South Wales**  
**Economic regulation for privatisation**  
Advisor to government of New South Wales on all economic regulatory aspects of the proposed partial lease the electricity transmission and distribution entities, TransGrid, AusGrid and Endeavour Energy.
- 2014-16**                    **Powerco**  
**Input methodologies review**  
Advice and several expert reports prepared in the context of the Commerce Commission's reviews of cost of capital and others aspects of the Input Methodologies governing the determination of maximum prices for New Zealand electricity and gas distribution networks.
- 2015**                        **ActewAGL**  
**Regulatory price review**  
Expert report on the economic interpretation of provisions in the national electricity law and rules in relation to the application of the national electricity objective to the entire price determination of the Australian Energy Regulator.
- 2014-16**                    **Atco Gas**  
**Access price review**  
Expert reports on the economic interpretation of provisions in the national gas law and rules in relation to depreciation and the application of the national gas objective to the entire draft decision, submitted to the Economic Regulation Authority of WA.
- 2014-16**                    **Government of Victoria**  
**Economic regulation for privatisation**  
Advisor to government of Victoria on the design, development and application of the framework for economic regulation of the Port of Melbourne Corporation in the context of the privatisation of the port by way of long term lease.
- 2013**                        **Actew Corporation**  
**Interpretation of economic terms**  
Advice on economic aspects of the decision of the Independent Competition and Regulatory Commission in relation to the price controls applying to Actew.
- 2012-13**                    **Gilbert + Tobin/Rio Tinto Coal Australia**  
**Price review arbitration**  
Analysis and expert reports prepared in the context of an arbitration concerning the price to be charged for use of the coal loading facilities at Abbott Point Coal Terminal.
- 2012-13**                    **Ashurst/Brisbane Airport Corporation**  
**Draft access undertaking**  
Advice, analysis and expert reports in the context of the preparation of a draft access undertaking specifying the basis for determining a ten year price path for landing charges necessary to finance a new parallel runway at Brisbane airport.
- 2012**                        **King & Wood Mallesons/Origin Energy**  
**Interpretation of economic terms**  
Expert reports and testimony in the context of judicial review proceedings before the Supreme Court of Queensland on the electricity retail price determination of the Queensland Competition Authority.

- 2012**                    **Contact Energy, New Zealand**  
**Transmission pricing methodology**  
Advice on reforms to the Transmission Pricing Methodology proposed by Electricity Authority.
- 2011-12**                **Energy Networks Association**  
**Network pricing rules**  
Advice and expert reports submitted to the Australian Energy Market Commission on wide-ranging reforms to the network pricing rules applying to electricity and gas transmission and distribution businesses, as proposed by the Australian Energy Regulator.
- 2010-12**                **QR National**  
**Regulatory and competition matters**  
Advisor on the competition and regulatory matters, including: a range of potential structural options arising in the context of the privatisation of QR National's coal and freight haulage businesses, particularly those arising in the context of a 'club ownership model' proposed by a group of major coal mine owners; and an assessment of competitive implications of proposed reforms to access charges for use of the electrified network.
- 2002-12**                **Orion New Zealand Ltd, New Zealand**  
**Electricity lines regulation**  
Advisor on regulatory and economic aspects of the implementation by the Commerce Commission of the evolving regimes for the regulation of New Zealand electricity lines businesses. This role has included assistance with the drafting submissions, the provision of expert reports, and the giving of expert evidence before the Commission.
- 2011**                    **Meridian Energy, New Zealand**  
**Undesirable trading situation**  
Advice on the economic interpretation and implications of the New Zealand electricity rule provisions that define an 'undesirable trading situation' in the wholesale electricity market.
- 2011**                    **Ausgrid**  
**Demand side management**  
Prepared a report on incentives, constraints and options for reform of the regulatory arrangements governing the role of demand side management in electricity markets.
- 2010-11**                **Transnet Corporation, South Africa**  
**Regulatory and competition policy**  
Advised on the preparation of a white paper on future policy and institutional reforms to the competitive and regulatory environment applying to the ports, rail and oil and gas pipeline sectors of South Africa.
- 2010-11**                **Minter Ellison/UNELCO, Vanuatu**  
**Arbitral review of decision by the Vanuatu regulator**  
Expert report and evidence before arbitrators on a range of matters arising from the Vanuatu regulator's decision on the base price to apply under four electricity concession contracts entered into by UNELCO and the Vanuatu government, including country risk component of the allowed rate of return and bringing to account events from the prior regulatory period.

- 2007-11**                    **Powerco/CitiPower**  
**Regulatory advice**  
Wide ranging advice on matters arising under the national electricity law and rules, such as the framework for reviewing electricity distribution price caps, the treatment of related party outsourcing arrangements, an expert report on application of the AER's efficiency benefit sharing scheme, the potential application of total factor productivity measures in CPI-X regulation, and arrangements for the state-wide roll out of advanced metering infrastructure.
- 1999-2004,**  
**2010-11**                    **Sydney Airports Corporation**  
**Aeronautical pricing notification**  
Wide ranging advice and expert reports on regulatory matters, including advice and expert reports in relation to SACL's notification to the ACCC of substantial reforms to aeronautical charges at Sydney Airport in 2001. This involved the analysis and presentation of pricing principles and their detailed application, through to discussion of such matters at SACL's board, with the ACCC, and in public consultation forums. Subsequent advice on two Productivity Commission reviews of airport charging, and notifications to the ACCC on revised charges for regional airlines.
- 2010**                        **Industry Funds Management/Queensland Investment Corporation**  
**Due diligence, Port of Brisbane**  
Retained to advise on regulatory and competition matters likely to affect the future financial and business performance of the Port of Brisbane, in the context of its sale by the Queensland government.
- 2009-10**                    **New Zealand Electricity Industry Working Group, New Zealand**  
**Transmission pricing project**  
Advice to a working group comprising representatives from lines companies, generators, major users and Transpower on potential improvements to the efficiency of New Zealand's electricity transmission pricing arrangements.
- 2007-09**                    **GDSE, Macau**  
**Electricity tariff reform**  
Advice to the regulator of electricity tariffs in Macau on a series of potential reforms to the structure of electricity supply tariffs.
- 2001-09**                    **Auckland International Airport Limited, New Zealand**  
**Aeronautical price regulation**  
Advice and various expert reports in relation to: the review by the Commerce Commission of the case for introducing price control at Auckland airport; a fundamental review of airport charges implemented in 2007; and the modified provisions of Part IV of the Commerce Act concerning the economic regulation of airports and other infrastructure service providers.
- 2008**                        **Western Power**  
**Optimal treatment and application of capital contributions**  
Advice on the optimal regulatory treatment of capital contributions, taking into account the effect of alternative approaches on tariffs, regulatory asset values, and network connection by new customers.
- 2000-08**                    **TransGrid**  
**National electricity market and revenue cap reset**  
Regulatory advisor to TransGrid on a range of issues arising in the context of the national electricity market (NEM), including: the economics of transmission pricing and investment and its integration with the wholesale energy market, regulatory asset valuation, the cost of capital and TransGrid's 2004 revenue cap reset.

**Valuation and contract analysis**

- 2016**                    **SyCip Salazar Hernandez & Gatmaitan/Maynilad Water Services**  
**Concession contract dispute**  
Expert reports and testimony in arbitration proceedings concerning the application of the price review clauses in the Manila Water Concession agreements.
- 2015-16**                **Clyde and Co/Apache Corporation**  
**Contract dispute**  
Expert reports submitted in the context of Supreme Court of Victoria proceedings concerning the appointment of receivers for Burrup Fertilisers Pty Ltd, in relation to the market price of gas available to supply an anhydrous ammonia plant on the Burrup Peninsula.
- 2015-16**                **Raja, Darryl & Loh/Serudong Power Sdn Bhd (SPSB)**  
**Power purchase agreement arbitration**  
Expert reports submitted in the context of an international arbitration held in Kuala Lumpur concerning the interpretation of price indexation provisions in a power purchase agreement between SPSB and Sabah Electricity Sdn Bhd.
- 2015-16**                **Australian Government Solicitor/Commonwealth of Australia**  
**Native title compensation**  
Expert reports and testimony before the Federal Court in relation to the native title compensation claim against the Northern Territory for certain acts extinguishing native title in the town of Timber Creek.
- 2014-15**                **Minter Ellison/Foxtel Management Pty Ltd**  
**Assessment of reasonable licence fee**  
Expert reports prepared in the context of proceedings before the Copyright Tribunal concerning the appropriate valuation of the rights to be paid by Foxtel for the broadcast and communication of commercial recordings licensed by the Phonographic Performance Company of Australia.
- 2014-15**                **Rahmat Lim & Partners/Port Dickson Power Berhad, Malaysia**  
**Power purchase agreement arbitration**  
Expert reports submitted in the context of an arbitration held in Kuala Lumpur concerning the interpretation of the price indexation provisions in a power purchase contract between Port Dickson Power Berhad and Tenaga Nasional Berhad.
- 2013**                    **Johnson Winter & Slattery/Origin**  
**Gas supply agreement price review**  
Analysis and advice on the implications of certain contract terms for the price of gas, to be determined in a potential arbitration concerning the terms of a substantial long term gas supply agreement.
- 2013**                    **Herbert Smith Freehills/Santos**  
**Gas supply agreement price review**  
Analysis and advice on factors influencing the market price of gas in eastern Australia, to be determined in a potential arbitration concerning the terms of a substantial long term gas supply agreement.

- 2012-13**                    **Herbert Smith Freehills/North West Shelf Gas**  
**Gas supply agreement arbitration**  
Expert reports on the implications of certain contract terms for the price of gas under a substantial long term gas supply agreement.
- 2012-13**                    **Allens/BHP Billiton-Esso**  
**Gas supply agreement arbitration**  
Analysis, advice and expert report on the implications of certain contract terms for the price of gas under a substantial long term gas supply agreement.
- 2012**                        **King & Wood Mallesons/Ausgrid**  
**Power purchase agreement arbitration**  
Expert report prepared and filed in an arbitration on the in relation to the effect of the government's newly introduced carbon pricing mechanism on the price to be paid under a long term power purchase and hedge agreement between an electricity generator and retailer.
- 2011**                        **Kelly & Co/Santos**  
**Wharfage dues agreement arbitration**  
Expert report and testimony in arbitration proceedings to determine the 'normal wharfage dues' to be paid for use of the port facility at Port Bonython for the transfer of petroleum products to tanker ships from a processing terminal in South Australia.
- 2010**                        **Barclays Capital/Confidential client**  
**Due diligence, Alinta Energy**  
Advice on the key industry related risks and issues facing Alinta Energy's gas and electricity assets during the due diligence process associated with its recapitalisation and sale.
- 2009**                        **Freehills/Santos**  
**Gas supply agreement price review**  
Analysis and advice on factors influencing the market price of gas in eastern Australia, to be determined in a potential arbitration concerning the terms of a substantial long term gas supply agreement.
- 2008-09**                    **Clayton Utz/Origin Energy**  
**Gas supply agreement arbitration**  
Expert reports and testimony in an arbitration concerning the market price of gas, which was determined and applied in a substantial long term gas supply agreement.
- 2008-09**                    **Minter Ellison/Confidential client**  
**Treatment of past capital contributions**  
Expert report and evidence given in arbitration proceedings on the extent to which a discount should apply under a long term water supply contract, in recognition of a capital contribution made at the outset of the agreement.
- 2008**                        **Freehills/Tenix Toll**  
**Logistics contract arbitration**  
Advice on the appropriate methodology for adjusting prices under a long term logistics contract in light of changing fuel costs.
- 2008**                        **BG plc**  
**Market analysis**  
Advise on economic aspects of the operation of the east Australian wholesale gas market in the context of the potential development of coal seam gas for use in LNG production and export.

- 2008**                    **Gilbert + Tobin/Waste Services NSW**  
**Damages estimation**  
Damages assessment in the context of a Federal Court finding of misleading and deceptive conduct in relation to the extent of environmental compliance in the provision of waste services.

## Securities and finance

- 2018**                    **William Roberts/Representative proceeding**  
**Misleading and damaging conduct**  
Preliminary analysis on the extent of liability and potential damages arising from a shareholder class action alleging breach of disclosure obligations.
- 2017-18**                **Australian Pipelines and Gas Association**  
**Allowed rate of return**  
Advice in relation to the Rate of return guideline review being undertaken by the Australian Energy Regulator, including participation in the AER's concurrent expert evidence session one.
- 2017**                    **Slater and Gordon/Gasmere Ltd**  
**Share portfolio valuation**  
Expert report prepared in relation to Supreme Court of Victoria proceedings brought against Shaw and Partners concerning the appropriate valuation of a share portfolio, the subject of a damages claim following the collapse of Opus Prime.
- 2017**                    **Portfolio Law/Representative proceeding**  
**Misleading and deceptive conduct**  
Expert report in representative proceedings in the Supreme Court of Victoria concerning the effect of certain disclosures on the price of ASX listed securities in Myer Ltd.
- 2016-17**                **Allens/QBE**  
**Shareholder class action**  
Advice and analysis on the extent of liability and potential damages arising from a shareholder class action alleging breach of QBE's ASX disclosure obligations.
- 2016**                    **Elliot Legal/Representative proceeding**  
**Misleading and deceptive conduct**  
Expert reports in representative proceedings in the Supreme Court of Victoria concerning the effect of certain disclosures on the price of ASX listed securities in Downer EDI Ltd.
- 2015-16**                **Maurice Blackburn/Representative proceeding**  
**Misleading and deceptive conduct**  
Expert reports submitted to the Federal Court assessing the effect of alleged misstatements in relation to the annual accounts and associated going concern assumption in relation to Tamaya Resources Ltd (in liquidation).
- 2013-15**                **Sydney Water Corporation**  
**Cost of capital estimation**  
Prepare three expert reports for submission to the Independent Pricing and Regulatory Tribunal (IPART) on the framework for determining the weighted average cost of capital for infrastructure service providers, and on estimation of an appropriate equity beta.

- 2012-15**                    **HWL Ebsworth/Confidential client**  
**Insider trading**  
Expert advice and analysis in the context of criminal proceedings alleging insider trading in certain ASX-listed securities (2012-13). Subsequent expert report filed in Supreme Court of Tasmania estimating price effects of inside information in context of 'proceeds of crime' proceedings.
- 2014**                        **Wotton Kearney/Genesys Wealth Advisors**  
**Misleading and deceptive conduct**  
Expert report submitted to the Supreme Court of Victoria assessing the accuracy of product disclosure statements and other information in relation to two fixed interest investment funds offered by Basis Capital.
- 2014**                        **TransGrid**  
**Cost of capital estimation**  
Preparation of an expert report for submission to the Australian Energy Regulator (AER) estimating the weighted average cost of capital for electricity network service providers.
- 2011-13**                   **Slater & Gordon/Modtech**  
**Shareholder damages assessment**  
Expert reports and testimony in representative proceedings before the Federal Court alleging misstatement and/or breach of the continuous disclosure obligations of the ASX-listed entity, GPT.
- 2011-12**                   **Freehills/National Australia Bank**  
**Shareholder damages assessment**  
Expert advice in connection with representative proceedings before the Federal Court alleging misstatement and/or breach of the continuous disclosure obligations of an ASX-listed entity.
- 2012**                        **Johnson Winter & Slattery/Victorian gas distributors**  
**Cost of equity estimation**  
Expert report submitted to the AER on the appropriate methodology for estimating the cost of equity under the capital asset pricing model.
- 2009-13**                   **Minter Ellison/Confidential client**  
**Misleading and deceptive conduct**  
Expert report and related advice in light of investor claims and pending litigation following the freezing of withdrawals from a fixed interest investment trust that primarily held US-denominated collateralised debt obligations (CDOs), as offered by a major Australian financial institution. Analysis undertaken includes the extent to which the investment risks were adequately described in the fund documents, and the quantum of any potential damages arising.
- 2011**                        **Barringer Leather/Confidential client**  
**Market manipulation**  
Expert report prepared in the context of criminal proceedings brought in the Supreme Court of NSW alleging market manipulation in the trading of certain ASX-listed securities.
- 2010-11**                   **Wotton Kearney/Confidential client**  
**Misleading and deceptive conduct**  
Expert report and analysis in light of investor claims and pending litigation following the freezing of withdrawals from two fixed interest investment trusts that primarily held US-denominated collateralised debt obligations (CDOs).

- 2010-11**                    **Maurice Blackburn/Confidential client**  
**Shareholder damages assessment**  
Analysis and advice in connection with representative proceedings before the Federal Court alleging misstatement and/or breach of the continuous disclosure obligations of an ASX-listed entity.
- 2010-11**                    **Mallesons/ActewAGL**  
**Judicial review of rate of return determination**  
Expert report and testimony in Federal Court proceedings seeking judicial review of a decision by the Australian Energy Regulator of its determination of the risk free rate of interest in its price setting determination for electricity distribution services.
- 2009-11**                    **William Roberts/Clime Capital**  
**Shareholder damages assessment**  
Expert reports submitted in representative proceedings before the Federal Court alleging misstatement and/or breach of the continuous disclosure obligations of ASX-listed entity, Credit Corp.
- 2009**                        **Jemena Limited**  
**Cost of equity estimation**  
Co-authored an expert report on the application of a domestic Fama-French three-factor model to estimate the cost of equity for regulated gas distribution businesses.
- 2008-09**                    **Clayton Utz/Fortescue Metals Group**  
**Materiality of share price response**  
Expert report and testimony before the Federal Court addressing alleged breaches of the ASX continuous disclosure obligations and the associated effect on the price of FMG securities arising from statements made by it in 2004.
- 2008-09**                    **Energy Trade Associations – APIA, ENA and Grid Australia**  
**Value of tax imputation credits**  
Preparation of expert report on the value to investors in Australian equities of tax imputation credits, for submission to the Australian Energy Regulator.
- 2008-09**                    **Freehills/Centro Properties**  
**Shareholder damages assessment**  
Assistance in the estimation of potential damages arising in representative proceedings concerning accounting misstatements and/or breach of the continuous disclosure obligations of an ASX-listed entity.
- 2008**                        **Slater & Gordon/Boyd**  
**Shareholder damages assessment**  
Expert report for submission to a mediation on the damages arising in representative proceedings before the Federal Court alleging accounting misstatements and/or breach of the continuous disclosure obligations of EDI Downer.
- 2007-08**                    **Maurice Blackburn/Watson**  
**Shareholder damages assessment**  
Advice in relation to damages arising in representative proceedings before the Federal Court alleging accounting misstatements and/or breach of the continuous disclosure obligation by the ASX-listed entity, AWB Limited.

## Institutional and regulatory reform

- 2008-11**                    **Department of Sustainability and Environment**  
**Management of bulk water supply**  
Advice on the concept and merits of establishing market based arrangements to guide both the day-to-day operation of the bulk water supply system in metropolitan Melbourne, as well as the trading of rights to water between the metropolitan water supply system and those throughout the state of Victoria.
- 2008**                        **Department of Treasury and Finance**  
**Access regime for water networks**  
Report on the principles that should be applied in developing a state-wide third party access regime for water supply networks.

## Sworn testimony, transcribed evidence<sup>2</sup>

- 2018**                        **Expert evidence before the Board of the Australian Energy Regulator, on behalf of the South Australian public lighting customers, in arbitration proceedings concerning public lighting charges**  
Expert reports, transcribed evidence, Melbourne, 7 May 2018
- Expert evidence before the Board of the Australian Energy Regulator, on behalf of the Australian Pipelines and Gas Association, in the Review of Rate of Return Guidelines, Concurrent expert evidence session one**  
Joint expert report, transcribed evidence, Sydney, 15 March 2018
- Expert evidence before the Federal Court on behalf of Changshu Longte Grinding Ball Co Ltd, in the matter of Changshu Longte v Anti-Dumping Review Panel and others.**  
Expert reports, sworn evidence, Sydney, 1 February 2018
- 2017**                        **Expert evidence before the Competition Tribunal on behalf of CrownBet, in the application by Tabcorp for authorisation to acquire Tatts**  
Expert reports, sworn evidence, Melbourne, 30 May–1 June 2017
- 2016**                        **Expert evidence before the Federal Court on behalf of Generic Health, in the matter of Bayer Pharma Aktiengesellschaft v Generic Health Pty Ltd**  
Expert reports, sworn evidence, Sydney, 14-15 December 2016
- Testimony before an UNCITRAL arbitral tribunal on behalf of Maynilad Water Service Inc (MWSI), in the matter of MWSI v Republic of the Philippines**  
Report, sworn evidence, Singapore, 6 December 2016
- Expert evidence on behalf of Powerco, at the Commerce Commission's Conference on the Cost of Capital matters**  
Transcribed evidence, public hearings, Wellington, 7 September 2016
- Expert evidence before the Federal Court on behalf of plaintiffs, in the matter of HFPS v Tamaya**  
Expert reports, sworn evidence, Sydney, 13 May 2016

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<sup>2</sup> Past ten years only.

**Expert evidence before an arbitral tribunal on behalf of Serudong Power Sdn Bhd (SPSB), in the matter of SPSB v Sabah Electricity Sdn Bhd (SESB)**  
Expert reports, sworn evidence, Kuala Lumpur, 27-28 April 2016

**Expert evidence before the Federal Court on behalf of the Commonwealth of Australia, in the matter of Griffiths v Northern Territory**  
Expert reports, sworn evidence, Darwin, 24-25 February 2016

**2015**      **Expert evidence before an arbitral tribunal on behalf of Port Dickson Power Berhad (PDP), in the matter of PDP v Tenaga Nasional Berhad (TNB)**  
Expert reports, sworn evidence, Kuala Lumpur, 28 January 2015

**2014**      **Expert evidence before a UNCITRAL arbitral tribunal on behalf of Manila Water Corporation Inc (MWCI) in the matter of MWCI v Metropolitan Waterworks and Sewerage System (MWSS)**  
Expert reports, sworn evidence, Sydney (by videolink to Manila), 31 August 2014

**Expert evidence before the Australian Competition Tribunal on behalf of the ACCC, in the matter of AGL Energy v ACCC**  
Expert reports, sworn evidence, Sydney, 10-11 June 2014

**2013**      **Expert evidence before the Supreme Court of Victoria on behalf of Maddingley Brown Coal in the matter of Maddingley Brown Coal v Environment Protection Agency of Victoria**  
Expert reports, sworn evidence, Melbourne, 12 August 2013

**Expert evidence before the Federal Court on behalf of Modtech in the matter of Modtech v GPT Management and Others**  
Expert reports, sworn evidence, Melbourne, 27 March 2013

**2012**      **Expert evidence before the Supreme Court of Queensland on behalf of Origin Energy, in the matter of Origin Energy Electricity Ltd and Others v Queensland Competition Authority and Others**  
Expert reports, sworn evidence, Brisbane, 3 December 2012

**2011**      **Expert evidence before the Federal Court on behalf of the Australian Turf Club and Australian Racing Board, in the matter of Bruce McHugh v ATC and Others**  
Expert report, sworn evidence, Sydney, 12 and 14 October 2011

**Expert evidence in arbitration proceedings before J von Doussa, QC, on behalf of Santos in the matter of Santos, and Others v Government of South Australia**  
Expert report, sworn evidence, Adelaide, 13-15 September 2011

**Expert evidence before a panel of arbitrators on behalf of UNELCO, in the matter of UNELCO v Government of Vanuatu**  
Expert report, sworn evidence, Melbourne, 23 March and 21 April 2011

**Expert evidence before the Federal Court on behalf of ActewAGL, in the matter of ActewAGL v Australian Energy Regulator**  
Expert report, sworn evidence, Sydney, 17 March 2011

**Deposition Testimony in Re Payment Card Interchange and Merchant Discount Litigation, in the United States District Court for the Eastern District of New York**

Deposition testimony, District of Columbia, 18 January 2011

**2010**

**Expert evidence before the Federal Court in behalf of the Australia Competition and Consumer Commission, in the matter of ACCC v Cement Australia and others**

Expert report, sworn evidence, Brisbane, 19-21 October 2010

**Expert evidence on behalf of Orion NZ, at the Commerce Commission's Conference on its Input Methodologies Emerging View Paper**

Transcribed evidence, public hearings, Wellington, 24 February 2010

**Deposition Testimony in Re Payment Card Interchange and Merchant Discount Antitrust Litigation, in the United States District Court for the Eastern District of New York**

Deposition Testimony, District of Columbia, 18 February 2010

**2009**

**Expert evidence before the Australian Competition Tribunal on behalf of Fortescue Metals Group Ltd, in the matter of Application for Review of Decision in Relation to Declaration of Services Provided by the Robe, Hamersley, Mt Newman and Goldsworthy Railways**

Expert report, sworn evidence, Melbourne, 12-13 October and 5-6 November 2009

**Expert evidence on behalf of Orion NZ, at the Commerce Commission's Conference on its Input Methodologies Discussion Paper**

Transcribed evidence, public hearings, Wellington, 16 September 2009

**Expert evidence before the Federal Court on behalf of Fortescue Metals Group Ltd, in the matter of ASIC v Fortescue Metals Group and Andrew Forrest**

Expert report, sworn evidence, Perth, 29 April–1 May 2009

**Expert report and evidence in arbitration proceedings before Hon Michael McHugh, AC QC, and Roger Gyles, QC, between Origin Energy and AGL**

Expert report, sworn evidence, Sydney, 19-24 March 2009

**2008**

**Expert evidence on behalf of Orion NZ, at the Commerce Commission's Conference on its Draft Decision on Authorisation for the Control of Natural Gas Pipeline Services**

Transcribed evidence, public hearings, Wellington, 21 February 2008

**2007**

**Expert report and evidence in arbitration proceedings before Sir Daryl Dawson between SteriCorp and Stericycle Inc.**

Expert report, sworn evidence, 11 July 2007

## Speeches and publications<sup>3</sup>

- 2017**
- IPART 25<sup>th</sup> Anniversary Conference**  
Electricity and Water: Mutual Lessons  
Speech, Sydney, 27 October 2017
- GCR 6<sup>th</sup> Annual Law Leaders Forum**  
ACCC v Flight Centre: What was going on?  
Speech, Sydney, 6 May 2017
- Association for Data-driven Marketing and Advertising**  
Driving Customers to you: Insights from Location Data  
Speech, Melbourne, 5 April 2017
- Global Competition Review Conference**  
Roadblocks and Solutions in Cross Border Mergers  
Panel discussant, Singapore, 2 March 2017
- 2016**
- NSW Planning Assessment Commission**  
Economic Effects of Drayton South Mine on Upper Hunter Industry  
Presentation to public hearing, Muswellbrook, 16 November 2016
- 2015**
- Electricity Networks Association Regulation Seminar, Brisbane**  
Participant in Expert Plenary Panel  
Speech, Brisbane, 5 August 2015
- NZ Commerce Commission Input Methodologies Review, Wellington**  
'Allocation of Risk' and 'New Technologies'  
Panel Discussant, Wellington, 29 July 2015
- Competition Matters Conference, Wellington**  
Disruptive Technologies  
Chair, Discussion Panel, Wellington, 24 July 2015
- Competition Law Conference**  
The Public Interest in Private Enforcement  
Speech, Sydney, 30 May 2015
- Singapore Aviation Academy, Singapore**  
Private Financing of Airport Infrastructure Expansions  
Speech, Singapore, 5 March 2015
- GCR 4<sup>th</sup> Annual Law Leaders Forum Asia-Pacific**  
Differences in using economics in EU and Asia Pacific  
Speech, Singapore, 5 March 2015
- AEMC Public Forum**  
East Coast Gas Market Review  
Speech, Sydney, 25 February 2015
- 2014**
- Competition and Consumer Workshop, Law Council of Australia**  
An Economist's Take on Taking Advantage  
Paper and Speech, Brisbane, 14 September 2014

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<sup>3</sup> Past ten years only

**Energy Networks 2014**

Innovation and Economic Regulation  
Speech, Melbourne, 1 May 2014

**The Network Industries Quarterly, *Consumer Advocacy in Australian Regulatory Decision Making – ‘Hard Choices Await’*, Vol. 16, No 1, 2014**

Ecole Polytechnique Federale de Lausanne, 31 March 2014

**GCR 3rd Annual Law Leaders Asia Pacific**

Role of Economists in Competition Law Enforcement in Asia-Pacific  
Speech, Singapore, 6 March 2014

**2013****University of South Australia – Competition and Consumer Workshop**

Empirical test and collusive behaviour  
Speech and participation game, Adelaide, 16 November 2013

**Energy in WA Conference**

Capacity Payments in the WEM – Time to Switch?  
Panel Discussion, Perth, 21 August 2013

**ACCC/AER Regulatory Conference**

Designing Customer Engagement  
Speech, Brisbane, 25 July 2013

**Victorian Reinsurance Discussion Group**

Australian Mining – When Opportunities and Risk Collide  
Speech, Melbourne, 1 March 2013

**NZ Downstream Conference**

Investment and Regulation  
Panel Discussion, Auckland, 25 July 2013

**2012****Rising Stars Competition Law Workshop**

Expert Evidence in Competition Cases  
Speech, Sydney, 24 November 2012

**KPPU – Workshop on the Economics of Merger Analysis**

Theories and Methods for Measuring the Competitive Effects of Mergers  
Speech, Bali, 19-21 November 2012

**University of South Australia – Competition and Consumer Workshop**

Reflections on Part IIIA of the Competition Act  
Speech, Adelaide, 12 October 2012

**NZ Downstream Conference**

Lines company consolidation – what are the benefits and risks?  
Panel discussion, Auckland, 6-7 March 2012

**2011****Law Council of Australia - Competition Workshop**

Coordinated effects in merger assessments  
Speech, Gold Coast, 27 August 2011

**ACCC Regulatory Conference**

Adapting Energy Markets to a Low Carbon Future  
Speech, Brisbane, 28 July 2011

- 2010**                    **IPART Efficiency and Competition in Infrastructure**  
Improving Performance Incentives for GTE's  
Speech, Sydney, 7 May 2010
- Law and Economics Association of New Zealand**  
Shareholder Class Actions – A Rising Trend in Australia  
Speeches, Auckland and Wellington, 15-16 November 2010
- 2009**                    **ACCC Regulatory Conference**  
Substitutes and Complements for Traditional Regulation  
Speech, Gold Coast, 30 July 2009
- Minter Ellison Shareholder Class Action Seminar**  
Investor Class Actions – Economic Evidence  
Speech, Sydney, 18 March 2009
- Competition Law and Regulation Conference**  
Commerce Amendment Act: Impact on Electricity Lines Businesses  
Speech, Wellington, 27 February 2009
- 2008**                    **Non-Executive Directors**  
Shareholder Class Actions in Australia  
Speech, Sydney, 28 July 2008
- Mergers & Acquisitions: Strategies 2008**  
Competition Law Implications for Mergers & Acquisitions  
Speech, Sydney, 27 May 2008
- Institute for Study of Competition and Regulation**  
Role of Merits Review under Part 4 and Part 4A of the Commerce Act  
Speech, Wellington, 20 February 2008
- 2007**                    **Law Council of Australia - Trade Practices Workshop**  
Hypothetical breach of s46  
Economic expert in mock trial, 20 October 2007
- Assessing the Merits of Early Termination Fees, *Economics of Antitrust: Complex Issues in a Dynamic Economy*, Wu, Lawrence (Ed)**  
NERA Economic Consulting 2007
- Assessing the Impact of Competition Policy Reforms on Infrastructure Performance**  
**ACCC Regulation Conference**  
Speech, Gold Coast, 27 July 2007

## Daniel Young

### Senior Economist

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E-mail: Daniel.Young@houstonkemp.com  
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### Overview

Daniel has thirteen years' experience in solving economic problems arising in regulatory, policy, finance and competition matters. He has a particular strength in the use of mathematical and statistical tools to inform his insights.

Daniel has advised corporations, regulators and governments across a range of industry sectors including energy, communications, water and transport. Daniel brings a deep understanding of regulatory frameworks, and particularly the application of building block models, approaches to asset valuation and tariff design.

Daniel has extensive experience advising on telecommunications matters in Australia, New Zealand and beyond. This includes the design and review of cost models for fixed line and mobile networks, advice on regulatory policy, analysis of competition issues and the calculation of damages. Daniel has a particular interest in the development of regulatory frameworks to address issues raised by the increasing penetration of fibre networks.

In the finance area, Daniel has played a significant role in advancing the regulatory debate on rate of return issues. He has advised businesses and regulators on these issues across a wide range of sectors and jurisdictions. His analysis has underpinned a series of successful Competition Tribunal appeals on the return on debt, and includes contributions to understanding the application of the capital asset pricing model in Australia and advice on using financial market data to estimate the current cost of equity.

On competition matters Daniel has assisted clients to improve the understanding complex problems through mathematical and statistical modelling. His experience includes advice on the likely effects of proposed mergers and acquisitions in relation to electricity wholesale, mining, media, petrol retailing, pharmaceuticals and metering. Daniel has advised businesses in a range of commercial litigation and arbitrations, including in relation to the renegotiation of major gas supply contracts and in the calculation of damages in international arbitrations.

Prior to joining HoustonKemp, Daniel was an Associate Director at the Competition Economists Group and an Analyst at NERA Economic Consulting. Daniel holds a Master of Commerce with first class honours majoring in Economics from the University of Auckland. He also holds a Bachelor of Commerce majoring in Economics and a Bachelor of Science majoring in Operations Research from the University of Auckland.

## Qualifications

**1999-2004**                    **University of Auckland**  
Master of Commerce in Economics  
(First Class Honours)  
Bachelor of Commerce and Science in Economics and Operations Research

## Prizes and Scholarships

**2004**                            Senior Scholarship in Statistics  
**2004**                            Senior Prize in Economics  
**2004**                            University of Auckland Masters Scholarship  
**2003**                            University of Auckland Department of Economics Scholarship

## Career Details

**2015-**                            **HoustonKemp Economists**  
Senior Economist, Sydney, Australia  
**2008-2015**                    **CEG Asia Pacific**  
Associate Director, Sydney, Australia  
**2005-2007**                    **NERA Economic Consulting**  
Analyst, Sydney, Australia

## Project Experience

### Competition Analysis

- 2017-18**            **DLA Piper/Dalrymple Bay Coal Terminal Management, Australia**  
**Application of declaration criteria**  
Provided advice to DLA Piper assessing the prospects of DBCT satisfying access criteria. Our advice included detailed modelling and analysis establishing whether the service provided is a natural monopoly and whether declaration would promote competition in dependent markets.
- 2017-18**            **Gilbert + Tobin, Australia**  
**Advice on the requirements of Part 23 of the NGR**  
Prepared advice for a confidential gas pipeline operator advising on the nature and outcomes of workably competitive markets, reflecting the objective of the new rules, and the implications of this for pipeline revenues and prices determined in arbitration under these rules.
- 2017**                **Minter Ellison/Crownet Australia**  
**Proposed acquisition of Tatts by Tabcorp**  
Contributed to the preparation of an expert report, prepared for Minter Ellison on behalf of Crownbet, examining the effects of the proposed acquisition by Tabcorp of Tatts. The report was submitted to the Australian Competition Tribunal.
- 2016-17**           **Confidential Client, Australia**  
**Proposed merger**  
Prepared a report setting out the likely effect of a proposed merger in the gas pipeline sector, and provided a framework for examining the competitive effect of mergers to be used for future transactions.
- 2016**                **APA Group, Australia**  
**Proposed auction for contracted but un-nominated gas pipeline capacity**  
Prepared advice for APA in relation to the AEMC's proposals to introduce a new auction for all contracted but un-nominated capacity in eastern Australia. The advice included an assessment of the economic propositions underpinning the AEMC's proposals.
- 2015**                **Johnson Winter & Slattery/Confidential Client**  
**Substantial lessening of competition**  
Contributed to a report on whether certain business conduct would substantially lessen competition in the context of a potential investigation or prosecution by the ACCC.
- 2014**                **Vector, New Zealand**  
**Electricity smart metering merger**  
Advised Vector on the competitive effects of its successful bid to acquire Meridian Energy's electricity smart metering provider, Arc Innovations. This required a high degree of familiarity with the market framework and the competitive dynamics, including the "market-driven" nature of the deployments to date.
- 2014**                **Vector, New Zealand**  
**Competition in gas metering**  
Provided advice to Vector as part of a preliminary inquiry by the Commerce Commission into whether to regulate gas metering services.

- 2014**                    **Commerce Commission, New Zealand**  
**Mobile spectrum auction purchase**  
Provided modelling of the costs involved in a number of alternative potential ownership configurations of mobile spectrum in New Zealand in advice to the New Zealand Commerce Commission.
- 2013**                    **Australian Competition and Consumer Commission, Australia**  
**Advice on proposed petrol station acquisitions**  
Advised the ACCC on the competitive analysis provided in support of a proposed acquisition of retail petrol stations. Our advice included new econometric analysis of the effects of the proposed acquisition on price formation and leadership in the relevant markets.
- 2012**                    **Australian Energy Market Commission, Australia**  
**Market power in generation markets**  
Assisted in preparing a report for the AEMC on the existence of market power and barriers to entry in the markets for electricity generation within the NEM
- 2011**                    **Australian Competition and Consumer Commission, Australia**  
**Advice on proposed media acquisitions**  
Assisted the ACCC in developing its analysis about the competitive effects of two proposed acquisitions in the media sector
- 2010**                    **Gilbert + Tobin, Australia**  
**BHPB proposed joint venture with Rio Tinto**  
Assisted in the preparation of expert statements on the likely impact of the joint venture of the Pilbara iron ore assets of BHP Billiton and Rio Tinto. The legal and economic teams involved were awarded ‘Deal of the year – Asia Pacific’ by Global Competition Review.
- 2009**                    **Van Bael & Bellis, EU**  
**Proposed transaction between GSK and Astra Zeneca**  
Provided market modelling of the effect of a concentration between Glaxo Smith Kline and Astra Zeneca in relation to certain common pharmaceutical product lines.
- 2009**                    **Gilbert + Tobin, Australia**  
**Analysis of proposed transaction in relation to small industrial packaging**  
Provided expert statements and empirical analysis on the substitutability between different types of small industrial packaging.
- 2008**                    **Gilbert + Tobin, Australia**  
**BHPB proposed merger with Rio Tinto**  
Empirical analysis and assisted in the preparation of an expert report on the competitive effect on iron ore prices of the proposed merger between BHP Billiton and Rio Tinto.
- 2006**                    **Australian Competition and Consumer Commission, Australia**  
**Proposed merger in electricity generation**  
Assessed the likely competitive effect of a proposed acquisition by International Power of NRG Flinder’s electricity generation assets in Victoria and South Australia.
- 2006**                    **Johnson, Winter and Slattery, Australia**  
**Joint Services Agreement authorisation**  
Assisted in the finalisation of an expert report assessing the net public benefits of authorising Qantas’ JSA with British Airways in Singapore.

- 2006**                    **Freehills, Australia**  
**Access to Foxtel's set-top box**  
Provided drafting and analytical assistance for an expert report examining the effect of Foxtel's proposed special access undertaking on competition in the market for subscription television services
- 2005**                    **Economic Development and Labour Bureau, Hong Kong**  
**Investigation of competition in the retail auto-fuel sector**  
Conducted benchmarking of retailing margins on auto-fuel as part of a team examining the competitiveness of the sector in Hong Kong.
- 2005**                    **Australian Competition and Consumer Commission, Australia**  
**Proposed merger in electricity generation**  
Developed a modelling framework for the ACCC analysing the effect on the proposed acquisition of Singapore Power's generation assets by China Light & Power and advised on potential divestitures
- 2005**                    **Phillips Fox, Australia**  
**Alleged predatory pricing in rail carriage**  
Assisted in the preparation of advice to Austrac in relation to alleged breaches of section 46 of the Trade Practices Act

## Regulatory Analysis and Cost Modelling

- 2017-18**                **Gilbert + Tobin, Australia**  
**Advice on implementing the requirements of Part 23 of the NGR**  
Prepared advice for a confidential gas pipeline operator setting out the implications of new rules for information disclosure and binding arbitration. We advised on the outcomes of workably competitive markets, reflecting the objective of the new rules, and applied asset valuation methods using the recovered capital method prescribed by the new rules
- 2017-18**                **DLA Piper, Australia**  
**Estimating a recovered capital method asset valuation**  
Advised a confidential gas pipeline operator on the calculation of a recovered capital method asset valuation complying with section 569(4)(b) of the NGR, including the appropriate approach to estimating a commercial rate of return over time.
- 2017-18**                **King & Wood Mallesons, Australia**  
**Outcomes consistent with a workably competitive market**  
Prepared an expert report for a confidential gas pipeline operator to be submitted as part an arbitration under Part 23 of the NGR. The report addressed how the objective of Part 23, to reflect the outcomes of a workably competitive market, should be applied by the arbitrator in determining the terms and conditions of access.
- 2017**                    **Bell Gully/Auckland Transport, New Zealand**  
**Estimating the efficient costs of providing bus services**  
Prepared expert advice and testimony in the context of arbitration of the contract price for a bus route in Auckland. The advice implemented data envelopment analysis to assess the efficient rate of costs for providing the service.

- 2017**                    **Chorus, New Zealand**  
**Addressing the risks associated with the provision of fibre services**  
Prepared advice for Chorus examining whether the proposed regulatory frameworks for copper and fibre services address the risks faced in providing services. Our advice suggested corresponding regulatory approaches that could manage these risks.
- 2016-17**                **Trustpower, New Zealand**  
**Electricity Authority's proposed changes to transmission pricing**  
Prepared two expert report reviewing the Electricity Authority's policy proposals and the cost-benefit analysis supporting them. The Authority proposed to introduce revised arrangements for transmission pricing that would set charges based on the benefits that accrue to network customers.
- 2016**                    **Port Authority of New South Wales, Australia**  
**Review of maximum fees and site occupation charges in Sydney Harbour**  
Assisted the Port Authority in preparing its submissions to IPART's review of maximum fees and site occupation charges for cruise ships in Sydney Harbour. This included assistance with preparing the submission and advice on building block modelling and the cost of capital.
- 2015-2016**            **New South Wales Government, Australia**  
**Review of regulatory modelling**  
Conducted a peer review of regulatory modelling as part of the partial leases of Ausgrid and Endeavour Energy.
- 2015**                    **AEMC, Australia**  
**Regulatory treatment of energy storage**  
Advised the AEMC in relation to economic principles underpinning the regulatory treatment of both network-level energy storage and behind-the-meter storage.
- 2015**                    **Optus, Australia**  
**Benchmarking prices for the domestic transmission capacity service**  
Advised Optus on the process of benchmarking prices for regulated DTCS on the basis of prices for services that were deemed competitive. The advice included application of stochastic frontier analysis to the data.
- 2010-15**              **Australian Amalgamated Terminals, Australia**  
**Regulatory model of car terminals**  
Prepared and presented a model of Australian Amalgamated Terminal's costs to estimate efficient cost-recovery prices as part of a regulatory process overseen by a price expert. Regularly maintaining and updating this model for this purpose.
- 2014-15**              **Everything Everywhere, United Kingdom**  
**Estimation of annual licence fees**  
Assisted Everything Everywhere in relation to Ofcom's review of the annual licence fees charged for 900 MHz and 1800 MHz spectrum.
- 2014**                    **Australian Energy Market Commission, Australia**  
**Survey of regulations on bidding in good faith in international jurisdictions**  
Prepared an expert report for the AEMC surveying the regulations on bidding, and the ability to change bids, in a range of international electricity markets.

- 2013-15**      **Chorus, New Zealand**  
**Modelling the UCLL and UBA prices**  
Assisted in the preparation of multiple expert reports for Chorus on issues relevant to estimating the TSLRIC costs of providing UCLL and UBA, including in relation to demand, depreciation and price trends.
- 2014**      **Australian Broadcasting Commission, Australia**  
**Estimate of cost-based charge for high frequency transmission**  
Prepared a report for the ABC demonstrating the likely level of cost-based charges for high frequency transmission under alternative asset valuation approaches.
- 2014**      **Everything Everywhere, United Kingdom**  
**Mobile termination**  
Reviewed Ofcom's model estimating the costs of mobile termination.
- 2014**      **Orion, New Zealand**  
**WACC percentile**  
Provided advice to Orion as part of the Commerce Commission's review of the use of the 75<sup>th</sup> percentile of the WACC range.
- 2014**      **SA Power Networks, Australia**  
**Materials cost escalation factors**  
Assisted SA Power Networks by estimating materials cost escalation factors for its operating and capital expenditure program. The report also included analysis of the performance of the modelling methodology over time.
- 2013**      **Herbert Geer, Australia**  
**Telecommunications fixed line pricing methodology**  
Assessed the ACCC's methodology for setting prices for fixed line services. Assisting Herbert Geer (on behalf of iiNet) in formulating questions for the ACCC and Telstra so as to assess the size of potential errors.
- 2013**      **Vector, New Zealand**  
**Default price-quality paths for electricity distribution and gas pipeline businesses**  
Advised Vector in relation to the Commerce Commission's draft decision on the application of DPPs to electricity and gas pipeline businesses. The focus of the review was on the Commission's application of econometrics in benchmarking the level of operating expenditure for the next regulatory period.
- 2012-13**      **Chorus, New Zealand**  
**Benchmarking the UBA price**  
Advised Chorus New Zealand on the Commerce Commission's proposed method of determining the UBA price in New Zealand by benchmarking against prices in other jurisdictions.
- 2012-13**      **NBN Co, Australia**  
**Special access undertaking**  
Assisted NBN Co in assessing aspects of its proposed SAU, including its proposed regulatory model and restrictions on its pricing behaviour. Subsequently advising NBN Co on the ACCC's draft decision in relation to these aspects and others of its undertaking.

- 2012-14**      **New South Wales, ACT and Tasmanian electricity network businesses, Australia**  
**Materials and labour cost escalation factors**  
Undertook modelling of materials and labour cost escalation factors for the businesses' regulatory proposals. Subsequently providing updates and responding to issues raised by the AER in its response to proposals.
- 2012-13**      **Virgin Australia, Australia**  
**Cost modelling of landing charges**  
Provided Virgin advice about modelling of landing charges proposed by a number of Australian airports.
- 2012**          **T-Mobile, Netherlands**  
**Mobile termination review**  
Provided T-Mobile with preliminary advice on OPTA's modelling of mobile termination charges.
- 2012**          **ElectraNet, Australia**  
**Materials cost escalation factors**  
Estimated materials cost escalation factors for ElectraNet and providing it advice on the use of labour cost escalation factors.
- 2012**          **Australian Broadcasting Commission, Australia**  
**Building block model review**  
Assisted the ABC by peer reviewing a building block model that it had commissioned. The review focused on the internal consistency of the model, particularly in relation to cashflow timing and the cost of capital.
- 2012**          **Everything Everywhere, United Kingdom**  
**Unbundled local loop appeal**  
Co-authored an expert witness statement assessing the basis of Ofcom's forecasting of fixed line volumes.
- 2012**          **Vector, New Zealand**  
**Default price quality paths**  
Analysed the Commerce Commission's draft decisions on its starting price adjustments for electricity and gas network businesses. Preparing two expert reports for Vector responding to these decisions.
- 2011-12**      **Western Power, Australia**  
**Materials and labour cost escalation factors**  
Prepared two expert reports setting out the basis for and estimating cost escalation factors for Western Power.
- 2011-12**      **Chorus, New Zealand**  
**Benchmarking the UCLL price**  
Advised Chorus New Zealand on the Commerce Commission's proposed method of determining the UCLL price in New Zealand by benchmarking against prices in other jurisdictions. Testified as an expert on behalf of Chorus at the Commission's conference.

- 2011-12**            **TransGrid, Australia**  
**Cost escalation factors**  
Provided cost escalation factors to TransGrid as part of its internal budgeting processes.
- 2011-12**            **Everything Everywhere, United Kingdom**  
**Mobile termination modelling and advice**  
Advised Everything Everywhere UK on its submissions and appeal in respect of Ofcom's decision on mobile termination rates
- 2011**                **Chorus, New Zealand**  
**International benchmarking of sub-national density characteristics**  
Conducted detailed research of sub-national density characteristics across a range of jurisdictions with potentially comparable UCLL prices.
- 2010-11**           **Airservices Australia, Australia**  
**Pricing of air traffic control services**  
Assisted Airservices Australia in the development of its regulatory proposal to the ACCC
- 2010-11**           **Integral Energy, Australia**  
**Assessment of credit metrics**  
Provided an internal report for Integral in relation to whether its existing dividend policy was consistent with maintenance of a credit rating.
- 2010-11**           **Digicel, Tahiti**  
**Mobile cost modelling**  
Developed a mobile cost model for Digicel Tahiti.
- 2009**                **Digicel, Vanuatu and Tonga**  
**Benchmarking mobile termination charges**  
Estimated benchmarks for mobile termination prices using econometric analysis on overseas benchmark for Digicel in Vanuatu and Tonga
- 2010-11**           **Digicel, Vanuatu and Tonga**  
**Benchmarking mobile termination charges**  
Estimated benchmarks for mobile termination prices using econometric analysis on overseas benchmark for Digicel in Vanuatu and Tonga
- 2010**                **Digicel, Papua New Guinea**  
**Mobile cost modelling**  
Developed a mobile cost model for Digicel PNG.
- 2010**                **Integral Energy, Australia**  
**Indexing ODRC valuation**  
Estimated of a current ODRC value for Integral Energy's assets on the basis of roll-forward and escalation of previous bottom-up estimate
- 2010**                **Optus, Australia**  
**Fixed line pricing principles**  
Advised Optus on appropriate principles for fixed line pricing and the formation of a roll-forward regulatory regime. Identifying and responding to a critical error in the proposed pricing principles

- 2009**                    **Digicel, Samoa**  
**Mobile cost modelling**  
Developed a mobile cost model for Digicel Samoa in the context of regulatory proceedings on mobile termination rates. Assisting Digicel in responding to the regulator's model and presenting findings in Apia.
- 2009**                    **Confidential, Australia**  
**Telecommunications cost modelling**  
Produced a high level cost assessment of an Australian telecommunications network on behalf of a confidential client.
- 2009**                    **Jemena Gas Networks, Australia**  
**Material and labour escalation factors**  
Estimated cost escalation factors, including carbon effects, for JGN's regulatory access arrangement.
- 2009**                    **Competitive Carriers Coalition, Australia**  
**Steiner improvements to minimum spanning trees**  
Estimated the potential cost improvements that could be achieved within the ACCC's fixed line cost model by the use of Steiner trees rather than minimum spanning trees on behalf of the Competition Carriers' Coalition
- 2008**                    **Optus, Australia**  
**Replacement cost estimate for a FTTP**  
Undertook adjustments to the ACCC's fixed line cost model to estimate the cost of a fibre to the premise roll out in Australia for Optus
- 2008-09**                **New South Wales and Tasmanian electricity network businesses, Australia**  
**Material and labour escalation factors**  
Estimated cost escalation factors for the businesses initial and revised regulatory proposals.
- 2008-09**                **ETSA, Australia**  
**Prices for public lighting**  
Provided ETSA with advice in relation to a dispute with ESCOSA over its proposed prices for public lighting.
- 2008**                    **Confidential, Australia**  
**Telecommunications cost modelling**  
Developed a network model for an Australian telecommunications company, estimating the cost associated with a regulated service.
- 2008**                    **ElectraNet, Australia**  
**Material and labour escalation factors**  
Estimated cost escalation factors for ElectraNet's revised regulatory proposal.
- 2007**                    **MultiNet, Australia**  
**Efficient margins on outsourced operating expenditure**  
Assisted in the preparation of an expert report on the prudence of MultiNet's outsourcing contracts in the context of the National Gas Code

- 2006-07**            **GDSE, Macau**  
**Efficient tariff design**  
Advised the electricity regulator in Macau about efficient tariff reform using modelling of the short run and long run marginal cost of supply in Macau
- 2006**                **Telecom New Zealand, New Zealand**  
**Universal service obligation replacement cost modelling**  
Assisted in the preparation of expert reports for Telecom New Zealand on the correct methodology for calculating the cost of providing the TSO (universal service obligation) using new entrant costs
- 2005**                **Integral Energy, Australia**  
**Estimating long run marginal cost**  
Advised Integral Energy on its LRMC of meeting growing network demand and how to reflect this in efficient tariff design (including design of critical peak pricing)

## Cost of Capital and Finance

- 2016**                **Powerco, New Zealand**  
**Review of asset beta and debt raising costs**  
Prepared expert reports, submitted to the Commerce Commission, assessing whether an asset beta uplift is required for gas distribution businesses relative to electricity network businesses. Further advised on efficient debt raising costs, including estimating the new issue premium and the costs of meeting ratings agencies requirements for debt raising practices.
- 2016**                **New South Wales Government, Australia**  
**Implications of cost of capital litigation**  
Drafted sections of vendor due diligence document summarising recent developments in the regulatory cost of capital. In particular, the drafting reviewed the implications of the Tribunal's decisions on the return on equity, return on debt and the value of imputation credits
- 2016**                **Perth Airport, Australia**  
**Estimating the weighted average cost of capital**  
Prepared an expert report estimating the cost of equity, cost of debt and the weighted average cost of capital for Perth Airport in the context of its commercial negotiations with airlines.
- 2015-16**            **Australian Government Solicitor / Commonwealth of Australia**  
**Native title compensation claim**  
In the context of a claim for compensation for extinguished native title in the Federal Court of Australia, contributed to the calculation of the compensation for the time value of money under a number of scenarios.
- 2015**                **Tuas Power Generation, Singapore**  
**Changes to forward sales contract scheme**  
Prepared an expert report for submission to the EMA advising on potential changes to the forward sales contract scheme, which underpins the electricity futures market in Singapore.

- 2015**                    **Jemena Gas Networks and the Victorian electricity distribution businesses, Australia**  
**Cost of debt**  
Prepared an expert report providing analysis of the AER's draft determination and recommending approaches for estimating the cost of debt.
- 2014-15**                **New South Wales and ACT electricity distribution businesses, Australia**  
**Advice on the weighted average cost of capital**  
Preparing expert reports responding to the AER's draft decision and undertaking new analysis of indications of the cost of equity and the cost of debt for regulated electricity network businesses.
- 2014**                    **ATCO, Australia**  
**Estimating the debt risk premium**  
Assisted in the preparation of an expert report for ATCO advising of issues in the estimation of the debt risk premium. Further assistance in response to the ERA's draft decision.
- 2014**                    **Victorian and South Australian electricity distribution businesses, Australia**  
**Estimating the new issue premium**  
Performed analysis of a large sample of bond issues made by Australian domiciled businesses in Australia and overseas to estimate the difference between primary yields and secondary market yields at the time of issue.
- 2013-15**              **Chorus, New Zealand**  
**Providing advice on the WACC**  
Provided Chorus advice on the WACC, including expert reports, in the context of its Final Pricing Principle for the UCLL and the UBA. This included general WACC advice in relation to estimating the cost of debt and the cost of equity, and also assistance in estimating the optimal mark-up to the cost of capital associated with asymmetric costs to society from mispricing regulated services.
- 2013**                    **Jemena, Australia**  
**Replicating the RBA's cost of debt benchmark**  
Undertook analysis aimed at understanding and replicating the analysis performed by the Reserve Bank of Australia in producing estimates of yields on corporate bonds.
- 2013**                    **United Energy, Australia**  
**Cost of debt statistics**  
Co-authored a report investigating the statistical properties of alternative yield curve estimates for estimating the cost of debt.
- 2013**                    **Victorian electricity distribution businesses, Australia**  
**Cost of debt**  
Estimated the cost of debt for use in the regulation of Victoria's advanced metering infrastructure. The analysis involved collection of bond data and analysis of the Bloomberg fair value curve as well as estimation of alternative yield curves.
- 2013**                    **Dampier to Bunbury Pipeline, Australia**  
**Estimating the benchmark credit rating**  
Assisted in the preparation of an expert report addressing the benchmark credit rating for the purpose of determining the debt risk premium. The report conducted econometric benchmarking of credit ratings against business characteristics.

- 2012-13**                    **Victorian gas network businesses, Australia**  
**Debt risk premium**  
Prepared expert reports estimating the regulatory debt risk premium for four Victorian gas distribution businesses. Assisting these businesses in their appeal of the AER's decision.
- 2012-13**                    **Victorian gas network businesses, Australia**  
**Internal consistency in estimating the cost of equity**  
Prepared expert reports reviewing the internal consistency of the AER's application of the Sharpe-Lintner CAPM for estimating the cost of equity. Advising of alternative and consistent means to estimate the cost of equity.
- 2012**                        **Western Power, Australia**  
**Regulatory cost of capital for electricity distribution**  
Prepared three expert reports for Western Power addressing issues in respect of the estimation of the equity beta, the calculation of debt risk premium and consistency of between CAPM parameters in estimating the cost of equity
- 2012**                        **Vector, New Zealand**  
**Appeal of input methodologies WACC decision**  
Assisted Vector in its appeal of the New Zealand Commerce Commission's WACC input methodology.
- 2011-12**                    **Vector, New Zealand**  
**Development of input methodologies**  
Prepared expert reports for Vector responding to the New Zealand Commerce Commission's proposed input methodologies for estimating the cost of capital
- 2011-12**                    **Energy Network Association, Australian Pipeline Industry Association, AusGrid, Australia**  
**AER rule change proposal**  
Advised the ENA and APIA in relation to the AER's proposed change to the National Electricity Rules and National Gas Rules.
- 2011**                        **AusGrid, Australia**  
**Effect of government ownership on the cost of debt**  
Produced an expert report assessing a rule change proposal based on a claim that government ownership should lower the benchmark cost of debt used for regulated electricity and gas network businesses.
- 2011**                        **APA, Australia**  
**Debt risk premium analysis**  
Prepared expert reports for APA in relation to debt risk premium for APT Allgas and APTPPL. Assisted APA in its successful appeal of the AER's APT Allgas debt risk premium decision.
- 2011**                        **Vanuatu Government, Vanuatu**  
**Country risk premium**  
Provided expert advice to the Vanuatu government in respect of the correct country risk premium to apply in the context of a dispute and arbitration to determine the cost of capital for UNELCO
- 2010-11**                    **Envestra Queensland and South Australia, Australia**  
**Cost of capital for gas distribution**  
Prepared expert reports advising Envestra of the risk-free rate, debt risk premium and equity beta to be used in its original and revised access arrangement proposals. Assisting on the appeal in relation to debt risk premium.

- 2010**                    **Commercial Radio Australia, Australia**  
**Cost of capital for multiplexer access**  
Assisted in the preparation of a report to Commercial Radio Australia advising it of the cost of capital in the context of regulation of access to its multiplexers in capital cities.
- 2010**                    **Victorian electricity network businesses, Australia**  
**Debt risk premium estimation and appeal**  
Advised the Victorian electricity network businesses on estimating the debt risk premium and in the successful appeals of the AER's decision. Responded to expert statistical analysis prepared by the AER's witness in these proceedings.
- 2010**                    **Jemena Gas Network, Australia**  
**Debt risk premium estimation and appeal**  
Advised the Jemena Gas Networks on estimating the debt risk premium and in its successful appeals of the AER's decision.
- 2010**                    **South East Queensland Water Businesses, Australia**  
**Cost of capital for water distribution access**  
Advised the South East Queensland Water Businesses on the risk-free rate, debt premium and equity beta applicable to their regulation by the Queensland Competition Authority
- 2010**                    **ActewAGL, Australia**  
**Debt risk premium estimation and appeal**  
Advised ActewAGL on the AER's methodology for estimating the cost of debt and debt risk premium. Assisted in the subsequently successful appeal on the same issue.
- 2008-09**                **Energy Networks Association, Australia**  
**AER's review of cost of capital parameters**  
Advised on the appropriate estimation of the cost of capital associated with capital assets used to provide electricity networks services in the context of a five yearly review performed by the Australian Energy Regulator
- 2008-09**                **New South Wales and Tasmania electricity network businesses, Australia**  
**Risk free rate and debt risk premium estimation and appeal**  
Advised on the appropriate estimation of the regulated cost of capital for distribution and transmission electricity network businesses in New South Wales and Tasmania and assisted in their subsequent appeal to the Australian Competition Tribunal.
- 2008**                    **ElectraNet and ActewAGL, Australia**  
**Calculating the real risk free rate**  
Assisted in the preparation of expert reports for ElectraNet and ActewAGL describing the correct method for deriving a real risk free rate in the CAPM.
- 2005-07**                **Rismark, Australia**  
**Financial products**  
Assessed the economic assumptions underlying an innovative mortgage product proposed by Rismark.

## Market Design and Damages

- 2013**                    **CEZ Shperndarje, Albania**  
**Economic damages for breach of contract**  
Estimated economic damages due to alleged conduct of the Albanian government in respect of CEZ's electricity distribution and supply businesses.
- 2013**                    **Confidential, Australia**  
**Commercial negotiation of wholesale agreement**  
Assisted a telecommunications business in its negotiations with a wholesale provider.
- 2012**                    **Clayton Utz, Australia**  
**Commercial damages in Australian iron ore**  
Assessed the potential costs of alternative uses of specific Pilbara iron ore deposits held by Hancock Prospecting and Wright Prospecting.
- 2012**                    **Australian Government Solicitor, Australia**  
**Plain packaging of tobacco products**  
Assisted the government solicitor in understanding the tobacco market in Australia in advance of international litigation due to the government's plain packaging legislation.
- 2011**                    **Telecom New Zealand, New Zealand**  
**Estimation of damages**  
Estimated damages to access seekers caused by non-availability of a service. Assisted Telecom in assessing Commerce Commission modelling and in settling the claim.
- 2010-11**                **Mallesons, Australia**  
**Financial assumptions in tax disputes**  
Assisted Malleson's to analyse a paper by Giffnock estimating a reasonable level of fees paid by CKI companies to the parent company for credit support.
- 2009**                    **Commercial Radio Australia, Australia**  
**Reserve price at auction**  
Estimated a reserve price in Commercial Radio Australia's auction of unallocated multiplexer capacity
- 2007**                    **Meerkin & Apel, Australia**  
**Commercial damages in medical waste disposal**  
Prepared an expert report and response for Meerkin & Apel examining the reasonableness of economic assumptions underlying the estimation of damages in a commercial arbitration
- 2007**                    **Freehills, Australia**  
**Class action damages estimates**  
Prepared estimates of the potential damages faced by Telstra under a class action lawsuit from its shareholders.
- 2007**                    **Santos, Australia**  
**Arbitration of a gas supply contract**  
Assisted in determining the market gas price on behalf of Santos in arbitration for a major gas supply contract between the Cooper Basin producers and AGL.
- 2006**                    **Santos, Australia**  
**Arbitration of a gas supply contract**  
Assisted in determining the market gas price on behalf of Santos in arbitration for a major gas supply contract between the South West Queensland gas producers and Xstrata.

## Policy Analysis

- 2017**                    **Transport for New South Wales, Australia**  
**Reviewing the contribution of the cruise industry and implications for pricing**  
Advised Transpower for New South Wales on the extent of the economic contribution of the cruise industry in New South Wales and the size of subsidies provided. The advice included implications of our findings for prices and price structures.
- 2017**                    **Infrastructure Australia, Australia**  
**Assessing projects for inclusion on the infrastructure priority list**  
Assisted Infrastructure Australia by assessing initiatives for inclusions in the infrastructure priority list. The task includes analysing the economic, social and environmental impacts of the proposed initiatives.
- 2016**                    **Visy, Australia**  
**Negotiations in relation to a commercial contract**  
Advised Visy on assessing potential options in relation to negotiations it was conducting over a commercial contract with a supplier of inputs. Our analysis included reviewing the benefits and costs that the options would have for Visy.
- 2016**                    **AEMC, Australia**  
**Arrangements for ensuring reliability of electricity supply**  
Prepared an internal report for the AEMC that summarised the various arrangements across the electricity supply chain for ensuring the continuity of supply to end-use customers.
- 2015-16**                **Climate Change Authority, Australia**  
**Peer review of modelling of emissions reductions policies**  
Prepared a peer review for the Climate Change Authority assessing Jacob's modelling of the effects of seven alternative approaches to meeting Australia's emissions reductions commitments. The review included a rigorous evaluation of the assumptions used and approaches adopted by Jacob's analysis.
- 2015**                    **New South Wales Government, Australia**  
**Assessment of new business opportunities**  
Prepared an expert report investigating regulatory barriers to the ability of the New South Wales distribution network businesses to engage in new areas of unregulated activities, as part of the partial lease of these businesses.
- 2007**                    **Ministerial Council on Energy, Australia**  
**Demand response of electricity users to smart metering**  
Estimated the likely response in the demand for electricity to the increased proliferation of time of day and critical peak tariffs as part of the MCE's cost/benefit analysis of the introduction of smart meters
- 2007**                    **Independent Pricing and Regulatory Authority, Australia**  
**Household survey analysis**  
Analysed the results of the 2006 household survey of electricity, gas and water consumption in the Sydney region and preparing a report summarising these on behalf of IPART

- 2006**                    **Australian Railway Association, Australia**  
**Comparative charging regimes for road and rail**  
Assisted in the preparation of reports for the Australian Railway Association on the efficiency of methods for charging for use of road and rail networks. Prepared a critique of an econometric analysis on the benefits of changing the charging methodology
- 2004**                    **University of Auckland, New Zealand**  
**Analysis of healthcare outcomes**  
Conducted statistical modelling of the relationships between socioeconomic variables and healthcare outcomes using census data

## Bronwyn McDonald

### Economist

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### Overview

Bronwyn joined HoustonKemp as an economist in February 2018. Bronwyn has expertise in applying economic theory to a broad range of complex competition, regulatory access and policy matters.

Bronwyn has a focus on competition economics. Her experience includes analysing the economic implications of mergers and acquisitions and strategic market behaviour in a range of sectors including finance, media, agriculture, digital platforms, retail, energy and health. She has a particular interest in issues relating to market dynamics and exclusionary conduct.

On matters of economic regulation, Bronwyn has experience in infrastructure access regulation matters across rail, ports, electricity and post networks. She also has a wealth of experience in public policy and economic impact evaluations, through her work for the UK development bank, specialising in addressing market failures in finance markets.

Bronwyn couples her deep experience in economics with an academic background in industrial organisation and commercial law to provide clear, robust analysis to clients. With an undergraduate degree in Psychology, Bronwyn is also passionate about behavioural economics.

Prior to joining HoustonKemp, Bronwyn was an economics manager at British Business Bank and, before that, an Economic Analyst at NERA Economic Consulting. Before joining NERA, Bronwyn was a Senior Consultant at Deloitte. Bronwyn holds a Bachelor of Commerce with First Class Honours in Economics, and undergraduate degrees in Commerce (Commercial Law) and Arts (Psychology), from the University of Auckland.

### Qualifications

- |             |  |
|-------------|--|
| <b>2014</b> | <b>University of Auckland</b><br>First Class Honours in Economics                          |
| <b>2012</b> | <b>Bachelor of Arts and Commerce</b><br>Majors in Commercial Law, Psychology and Economics |

## Prizes and scholarships

**2011 - 2014** Senior Prize, Economics  
Flying Officer Alfred P Fogerty Memorial Scholarship 2014  
Bonded Merit Scholarship 2012  
Lifetime membership – International Honour Society Beta Gamma Sigma

## Career details

**2018-** **HoustonKemp Economists**  
Economist, Sydney, Australia

**2016-2017** **British Business Bank**  
Economics Manager, London, United Kingdom

**2014-2016** **NERA Economic Consulting**  
Economic Analyst, Auckland, New Zealand

**2011 - 2014** **Deloitte**  
Senior Consultant, Auckland, New Zealand

## Project experience

### Competition, access and mergers

**2018** **Queensland Rail**  
**Access to facilities**  
Advice in relation to the Queensland Competition Authority's review of the presently declared status of services provided by QR's five rail networks.

**2018** **DLA Piper/DBCT Management**  
**Access to facilities**  
Advice in relation to the Queensland Competition Authority's review of the presently declared status of services provided by the Dalrymple Bay Coal Terminal.

**2018** **Westpac Banking Corporation**  
**Competition analysis**  
Expert report prepared for the Productivity Commission in response to the draft finding in its banking competition inquiry that each of Australia's banks holds substantial market power.

**2018** **King & Wood Mallesons**  
**Competition analysis**  
Advice to a digital platform service provider on potential competition concerns arising in the ACCC's digital platforms inquiry.

**2016** **Kiwibank**  
**Competition analysis**  
Competition issues arising as part of its dispute with E-Trans International Finance on matters relating to the Anti-Money Laundering and Countering Financing of Terrorism Act

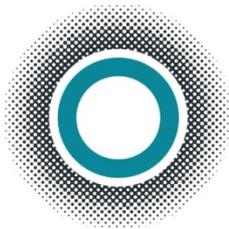
- 2015-16**            **New Zealand Post**  
**Access to facilities**  
Economic advice in relation to setting New Zealand Post's downstream access prices and other regulatory issues.
- 2014-16**            **Cavalier Wool Holdings**  
**Merger analysis**  
Economic advice in respect of its proposed acquisition of New Zealand Wool Services International
- 2015-16**            **Fonterra**  
**Competition analysis**  
Economic advice in respect of the Commerce Commission's "Review of the state of competition in the New Zealand dairy industry"
- 2014-16**            **Meridian Energy**  
**Regulatory analysis**  
Economic advice in relation to the New Zealand Electricity Authority's Transmission Pricing Review.
- 2015**                **Staples**  
**Merger analysis**  
Economic advice in respect of its proposed acquisition of OfficeMax, in both Australia and New Zealand
- 2015**                **Z Energy**  
**Merger analysis**  
Economic advice in respect of its proposed acquisition of Chevron New Zealand
- 2014**                **Austron and Evolution**  
**Merger analysis**  
Economic advice in respect of their proposed acquisition and privatisation of Acurity, a transaction relating to the private hospital market in Wellington

## Regulatory analysis

- 2014-2016**            **Meridian Energy**  
Economic advice in relation to the Electricity Authority's Transmission Pricing Review.

**As an economics manager at British Business Bank****2016-2017*****Key projects:***

- Economic research for HM Treasury in relation to the Patient Capital Review, which covered all aspects of the financial system affecting the provision of long-term finance to growing innovative firms;
- Partnering with the UK Business Angels Association to investigate trends in the distribution of angel investors and investments across the UK;
- Economic impact evaluation of the Start Up Loans Company, to assess the programme's impact and value for money to the UK government;
- Economic research on marketplace lending including peer-to-peer business lending, invoice finance and equity crowdfunding, and in particular whether the increased diversity of supply for finance has a positive impact on small businesses in the UK;
- Primary research and analysis on aspects of small business demand for external finance, working with Bank of England, commercial banks, the British Bankers Association, HM Treasury and other stakeholders.



# HOUSTONKEMP

Economists

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